

(1981) 10 GUJ CK 0011
In the Gujarat High Court

Siddharth Mohanlal Sharma

APPELLANT

Vs

South Gujarat University

RESPONDENT

Date of Decision : 23-10-1981

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Evidence Act, 1872 — Section 73

National Insurance (Industrial Injuries) Act, 1946 — Section 47

Citation : (1982) GLH 648 : (1982) 1 GLR 233

Hon'ble Judges : P.D. Desai, J; D.H. Shukla, J

Bench : Division Bench

Judgement

P.D. Desai, J.—Questions of some importance in the field of administrative law arise in this appeal in the context of the exercise of

disciplinary jurisdiction by a University over a student who is alleged to have misconducted himself at an examination. The question of the ambit of

the power of the Court exercising writ jurisdiction to examine the validity of the findings of fact upon which the ultimate decision recorded by a

disciplinary authority rests has been the subject-matter of a catena of decisions. One of the rules which is well-established is that to find facts on no

evidence is to err in law and that such an error attracts judicial review. What is meant however, by "no evidence"? Does it mean total dearth of

evidence or lack of evidence reasonably capable of supporting the findings? This is principal question which directly falls for consideration herein.

The subsidiary question is as to when can the quantum of penalty, which is within the exclusive domain of the disciplinary authority, be reviewed in

writ jurisdiction. These questions require examination in the context of the fact situation set out hereunder.

2. The appellant (hereinafter referred to as ""the petitioner""), who was a student of the M.T.B. Arts College, Surat, appeared at the First Year B.A.

Examination held by the South Gujarat University (hereinafter referred to as ""the University"" or ""the respondent-University"" in the month of March,

1979. His roll number for the said examination was 1993. The result of the said examination was declared sometime in the month of June 1979.

However, the result of the petitioner was not declared and it was withheld by the University.

3. By a notice dated June 21/23, 1979 the petitioner was called upon to show cause why appropriate action should not be taken against him for

having appeared in the paper of English at the Pre-University Arts. Examination held in April 1979 in place of the candidate bearing roll No. 993

of the Surat Centre.

4. The petitioner showed cause by his reply dated July 2, 1979. His Case was one of a total denial. He asserted that the allegation levelled against

hi was totally false and baseless. He stated that he did not know the candidat bearing roll No. 993 and that, in fact, at the material time, he was out

of station.

5. By a communication dated August 20, 1979, the petitioner was informed that although he had denied the allegation, on the basis of the evidence

in its possession, the University had reasons to believe that he was guilty of the alleged misconduct. The petitioner was called upon to appear on

August 31, 1979 at 1-30 P.M. before the "Achar Samiti" (hereinafter referred to as ""the Committee"") constituted by the respondent-University

and to submit his defence orally or in writing and to place before the Committee the evidence in support of such defence.

6. The petitioner appeared before the Committee as required. The Committee confronted the petitioner with the answer book, in the subject of

English, of the candidate bearing roll No. 993 at the Pre-University Arts Examination and "his own answer book in the subject of English at the

First Year B.A. Examination, and he was pointed out ""certain similarities"" in the hand-writings in both the answer books and he was asked to offer

his explanation as regards the said circumstance. The petitioner was unable to offer any explanation. The petitioner was also questioned whether be

knew the candidate having roll No. 993" at the Pre-University Art Examination,

but he denied any acquaintance with the said candidate. The petitioner stated that he had not personated the said candidate and he reiterated that at the material time he was in Aligadh, where he had gone to see his grandmother who was operated upon.

7. It appears that earlier on the same day, the Committee had also independently questioned the candidate bearing roll No. 993 against Whom separate proceedings of disciplinary nature were initiated. When confronted with what purported to be his answer book in the subject of English at the Pre-University Arts Examination, the said candidate admitted that the answers were not in his handwriting. He further admitted that he had not appeared in the examination because of his indisposition and that somebody had personated him. His version was that somebody inimical to him appeared to have taken the step in order to falsely involve him, When questioned (after the petitioner had made his statement) whether he knew the petitioner, he stated that he knew the petitioner by name.

8. At the conclusion of the inquiry held as aforesaid, the Committee recorded a finding at the foot of the proceedings that it was of the opinion that the petitioner had personated the candidate bearing roll No. 993 and that both had colluded with each other and that they were, therefore, denying the charge of misconduct. The Committee recorded that it had left it to the Syndicate to decide as to what penalty should be imposed upon them for their misconduct.

9. The formal decision of the Committee in the case of the petitioner was recorded on August 30/31, 1979. The Committee observed, that in spite of the petitioner's denial, he appeared to have misconducted himself at the examination because a comparison of his admitted handwriting in the answer-book of the paper of English at the F.Y.B.A. Examination with the handwriting in the answer-book of the paper in English of the candidate bearing roll No. 993 at the Pre-University Arts Examination revealed apparent similarity. The Committee, therefore, referred the case to the Syndicate for a suitable action.

10. The Syndicate, at its meeting held on September 5, 1979, considered amongst other things, the aforesaid report made by the Committee. The Syndicate having accepted the report of the committee resolved that the petitioner and the candidate bearing roll No. 993, both, should be

debarred from prosecuting studies at any of the colleges or institutions affiliated to the University and from appearing at any examinations

conducted by the University upto May 31, 1984. The resolution of the Syndicate was, however, silent VSgard to the result of the First Year B.A.

Examination in which the petitioner had already appeared earlier.

11. The petitioner challenged the decision of the respondent-University by instituting a writ petition (Special Civil Application No. 214 of 1980) in

this Court. The writ petition was admitted and it reached final hearing before our learned Brother B.K. Mehta, on July 3, 1980. Three intentions

were urged before our learned Brother in support of the challenge to the impugned decision. They were: (1) the petitioner was denied reasonable

opportunity to put forward his case and to controvert the material relied against him; (2) the defence of the petitioner was not considered either by

the Committee or by the Syndicate and this was evident from the fact that none of the two authorities had assigned any reasons for rejecting the

defence; (3) the impugned decision was based on no evidence. Our learned Brother rejected all the three contentions. He held:-(1) that adequate

opportunity was afforded to the petitioner to state his case and to controvert the material relied against him, because (a) the show-cause notice

sets, out in details the material allegations against the petitioner, (b) the petitioner had submitted his defence in the reply to the show-cause notice,

(c) personal hearing was also afforded to the petitioner by the Committee and he was confronted with the answer books one of his own and the

other that of the candidate bearing roll No. 993 - which contained similar handwriting, and his specific attention was invited and explanation was

sought from him in regard to the peculiar characteristics revealing similarity, and (d) the petitioner did not ask for any further opportunity to put

forward his defence, (2) that since the petitioner failed to lead evidence on the issue of his having gone to Aligadh, there was no occasion for the

University to give any finding on the plea of alibi and (3) that there was evidence before the Committee in the shape of two sets of supplementaries

in which the handwritings appeared to be apparently similar and that if the Committee and the Syndicate acted on such evidence, it could not be

said that there was no evidence. Our learned Brother observed that though the practice of comparison of handwriting in admitted and disputed

documents by courts of law without proper and adequate assistance has been deprecated, it cannot be argued successfully that in disciplinary

proceedings before a domestic tribunal where the Evidence Act does not apply and where the tribunal has to discharge its function on the material

which is placed before it, the rules of prudence applicable in judicial proceedings were required to be strictly followed.

12. It must be mentioned at this stage that it was also submitted on behalf of the petitioner that having regard to the fact that the charge against him

was held proved on the slender evidence consisting of similarity of handwritings in two answer books, the penalty imposed was too severe and that

even otherwise, having regard to the antecedents and economic and social background, the penalty was excessive. The petitioner requested the

Court to make a recommendation to the respondent-University to take a lenient view of the matter and to award lesser penalty. On behalf of the

respondent-University, it was urged that in cases of personation, the respondent-University had awarded penalty of rustication from examination

for five years and that therefore a lenient view could not possibly be taken. Our learned Brother, having considered all the circumstances of the

case, including the fact that the finding of guilt was based on circumstantial evidence obtained by "visual comparison of the handwritings in the two

sets of supplementaries which may not be considered to be sufficient evidence in the court of law for concluding about the guilt of impersonation

made the following observation:

...I am of the opinion that if the syndicate on an application being made by petitioner decides to review its decision about the penalty and directs

that the petitioner should be debarred from appearing at the examination for a period of one year, that is upto March/April, 1980 Examination, it

would meet the ends of justice.

In the final result, however, the petition was dismissed.

13. After the dismissal of the writ petition, petitioner appears to have made an application to the respondent-University for the review of the

penalty. The Syndicate which met on September, 10, 1980 resolved not to reduce the penalty, on the grounds that: (1) the petitioner was visited

with penalty similar to that imposed in identical cases, (2) if more lenient penalty were to be imposed as suggested by the Court, then the same

would compare unfavourably with penalty imposed in other cases of similar nature or in cases where the misconduct was of lesser gravity, and (3)

such a situation may give rise to a misunderstanding that discrimination was practised. The Syndicate requested the University Counsel to bring

these facts to the notice of this Court and to inform the Court that under those circumstances it was not possible to review the penalty.

14. The petitioner thereafter Sled the present Letters Patent Appeal on December 5, 1980. Notice was ordered to issue on the appeal on

February 27, 1981 and it was made returnable on March 6, 1981. It appears that at that stage the respondent-University appeared through its

Counsel and the Court suggested that the question of penalty should be considered once again. Thereupon, the Syndicate again met on March 11,

1981, and having considered the matter, resolved not to review the penalty on the following grounds: (1) having regard to the penalties prescribed

for certain common misconducts, any reduction in the penalty imposed on the petitioner, as suggested by the Court, in respect of a misconduct

which was of a grave nature, would result in imposition of lesser penalty, then that which was ordinarily imposed even in cases of misconduct of

lesser gravity, (2) the adoption of such a course would require the University to cancel or revise the penalty prescribed by it for common

misconducts (3) the reduction of penalty in the case of petitioner would expose the University to a charge of discrimination, because in similar

cases identical penalty was imposed earlier, and (4) the Syndicate having considered the entire matter earlier had not found it proper to reduce the

penalty for the same reasons. The University Counsel was requested to bring the resolution to the notice of the Court.

15. The appeal thereafter reached for hearing on March 20, 1981 and it was admitted. The appeal has now reached final hearing before us.

16. On behalf of the petitioner, the same grounds which were urged before our learned Brother B.K. Mehta were pressed into service at the

hearing of the appeal. In addition, it was urged that the respondent-University failed in performing its duty by refusing to review the penalty

imposed upon the petitioner pursuant to the recommendation made by this Court on two occasions, upon misconception of law, and that, in any

case, the penalty being grossly disproportionate to the misconduct for which the petitioner is found guilty, the Court should intervene and grant just

relief to the petitioner.

17. It would be convenient at this stage to reproduce Ordinance 142 framed by the respondent-University, under which it purports to have acted

in the instant case. The said Ordinance reads as under:

On receipt of a report regarding the misconduct of any student at any University or College Examination including breach of any of the rules laid

down by the Syndicate for the proper conduct of examination, the Syndicate shall have power to punish such misconduct or breach of rules by

exclusion of such candidate from any University or College Examination of any University courses in a College or the University, or from any

convocation for the purpose of conferring degrees, either permanently or for a specified period, or by the cancellation of the result of the candidate

in the University Examination for which the candidate appeared or by the deprivation of any University scholarship held by him, or by the

cancellation of the award of any University prize or medal to him, or in any two or more of the aforesaid ways.

The Ordinance would appear to empower the Syndicate to punish any student who is found to be guilty of misconduct at any University or College

Examination and the penalties which could be imposed upon such an errant student consist of: (a) exclusion of such student from any University or

College examination of any University courses or from any convocation for the purpose of conferring degrees, either permanently or for a specified

period, or (b) cancellation of the result of the candidate in the University Examination for which the candidate appeared, or (c) the deprivation of

any University scholarship held by him, or (d) cancellation of the award of any University prize or medal to him, or (e) any two or more of the

aforesaid penalties. There is no dispute that the penalty imposed upon the petitioner is within the four-comers of the Ordinance.

18. The University is an authority within the meaning of Article 12. It is subject to the injunction of Article 14, which strikes at arbitrariness in State

action and ensures fairness and equality of treatment. The actions of the University, therefore, must be "right and just and fair" and not arbitrary,

fanciful or oppressive. (See *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . The principle of reasonableness pervades Article 14

like a brooding omnipresence and any State action to be valid must answer the

test of reasonableness.

18.1 Natural justice likewise is sanctified constitutionally in the great equalising principle enunciated in Article 14 and, therefore, the executive

action must meet the requirements of rules of natural justice. Natural justice, it has been said, is only "fair play in action". When, therefore, a

university authority in the exercise of its disciplinary power, holds proceedings for infliction of penalty for misconduct upon one of its errant

students, it is its duty to act fairly in matters, substantive and procedural. Certiorari will issue to quash those proceedings if it is found that the

authority acted unreasonably or unfairly in the circumstances of the case.

19. It is true that findings of fact recorded in the course of such an inquiry, unless they are collateral or jurisdictional, are exempt from judicial

review and that the Court exercising writ jurisdiction cannot sit in appeal over the ultimate decision based on such findings and review it on merits.

However, there are two well-known exceptions to the said rule. First, the case must not be one where there is "no evidence" to support the

findings. Secondly, the ultimate decision based on such findings must not be perverse or unreasonable. These two concepts have affinity with each

other; indeed, the "no evidence" principle clearly has something in common with the principle that perverse or unreasonable action is unauthorised

and ultra vires. As pointed out by Lord Radcliffe in *Edward (Inspector of Texas) v. Bairstow* (1956) AppCas 14 "I do not think that it much

matters whether this state of affairs is described as one in which there is no evidence to support the determination or as one in which the evidence

is inconsistent with and contradictory of the determination, or as one in which the true and only reasonable conclusion contradicts the

determination. Rightly understood, each phrase propounds the same test. "In which of these cases, according to Lord Radcliffe, there would be an

error in point of law requiring the court's intervention.

20. There appears to be some misconception as to the true meaning of the "no evidence" principle. The rule has been adopted in India from

England and we may, therefore, ascertain, in the first instance, how the rule is there understood. Prof. H.W.R. Wade in his treatise on

Administrative Law, Fourth Edition, has observed at page 274 as follows:

It is one thing to weigh conflicting evidence which might justify a conclusion

either way. It is another thing altogether to make insupportable findings.

This is an abuse of power and may cause grave injustice. At this point, therefore, the court is disposed to intervene....

"No evidence" does not mean only a total dearth of evidence. It extends to any case where the evidence, taken as a whole, is not reasonably

capable of supporting the finding; or where, in other words, no tribunal could reasonably reach that conclusion on that evidence....

There is, indeed, the well established rule that to find facts on no evidence is to err in law.

The learned Author has pointed out that the "no evidence" rule has some affinity with the substantial evidence rule of American law which, as

explained by Bernard Schwartz in his treatise on Administrative Law, 1976 Edition, at page 595, means, "such evidence as might lead a reasonable

person to make a finding." In other words, according to the learned Author. "The evidence in support of a factfinding is substantial when from it an

inference of existence of the fact may be drawn reasonably.

21. The earliest English decision which has touched upon the concept of "no evidence" is that of the Court of Appeal in *The King v. Carson*

Roberts 1908 (1) K.B., 407. The question in that case was whether the superior Court having the power to issue a writ of certiorari, if it appeared

to it that the decision of the auditor in regard to disallowances and surcharges, under the Public Health Act, 1875, was erroneous, could review the

same only when such decision was erroneous in point of law and not when the auditor had come to an erroneous conclusion in fact. *Fletcher*

Moulton L.J. observed in that case as follows at page 423:

It is admitted by the appellant that if there was no evidence on which any tribunal could reasonably come to the conclusion to which the auditor has

come the Superior Courts have a jurisdiction to quash the surcharge, and in my opinion this is the case here.

22. In *Regina v. Deputy Industrial Injuries Commissioner (Ex parte Moore)* (1965) 1 Queen's Bench 456, the question before the Court of

Appeal was whether the Deputy Industrial Injuries Commissioner, entertaining proceedings u/s 47 of the National Insurance (Industrial Injuries)

Act, 1946 had acted in accordance with natural justice in the exercise of his appellate powers. The Court held that the Deputy Commissioner was

not governed by the strict rules of evidence applicable to ordinary civil trials and that the only real limitation on the discretion of the Commissioner

as to the procedure which he should adopt was that it should be in accordance with natural justice. The Deputy Commissioner in that case treated

the medical opinion given in previous cases as independent evidence in the case before him, and it was held that since both parties and their

witnesses had had full opportunity of commenting upon the opinions expressed in the previous cases, there had been no breach by the deputy

commissioner of the rules of natural justice in treating those opinions as evidence in the case before him. In this context, two learned Law Lords

have made certain observations on the true context of the "'no evidence'" rule by treating the said rule as a principle of natural justice. Willmer L.J.

observed at page 476 as under:

Where so much is left to the discretion of the commissioner, the only real limitation, as I see it, is that the procedure must be in accordance with

natural justice. This involves that any information on which the commissioner acts, whatever its source, must be at least of some probative value.

Diplock L.J. made the following pertinent observations at pages 487-488:

Where, as in the present case, a personal bias or mala fides on the part of the deputy commissioner is not in question, the rules of natural justice

which he must observe can, in my view, be reduced to two. First, he must base his decision on evidence, whether a hearing is requested or not.

Secondly, if a hearing is requested, he must fairly listen to the contentions of all persons who are entitled to be represented at the hearing.

In the context of the first rule, "'evidence'" is not restricted to evidence which would be admissible in a court of law....

...The requirement that a person exercising quasi judicial functions must base his decision on evidence means no more than it must be based upon

material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or

unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that he must not spin a coin or consult an

astrologer, but he may take into account any material which, as a matter of reason, has some probative value in the sense mentioned above. If it is

capable of having any probative value, the weight to be attached to it is a matter

for the person to whom Parliament has entrusted the responsibility of deciding the issue. The supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its own view for his.

23. In *French Kier Development Ltd. v. Secretary of State for the Environment* and Anr. 1977 (1) All End LR 297, the jurisdiction of the court of

Queens Bench Division was invoked for quashing the appellate decision of the Secretary of State confirming the refusal of permission for

development. The Secretary of State accepted the findings of fact recorded by the Inspector at the conclusion of the Public inquiry which followed

the Borough Council's refusal of permission but not his recommendation that the appeal should be allowed. The Secretary of State, in deciding the

appeal, took into consideration the contents of a document and accepted them as correct, notwithstanding the fact that the Inspector had regarded

the document as of no evidential value. The argument before Willis J. was that the Secretary of State should have ignored the document, or any

reference to its contents, as the Inspector did, since it was not produced by any witness, its provenance was unexplained and it could not be tested

by cross-examination. The learned Judge made the following observations while considering the submissions:

It hardly needs to be said that legal rules of evidence are not applied at local inquiries, and both oral and documentary evidence is freely admitted

in circumstances where even the more relaxed rules of evidence at the present time would not allow of its admission in a court of law. Nonetheless

some limit must surely be imposed in fairness to an appellant on the scope of so called evidence which by no stretch of the imagination can be said

to have the slightest evidential value. This must, I should have thought, particularly be so when if such "evidence" is considered, it is used to support

a conclusion unfavourable to the appellant. I think the Inspector was right to ignore this document and the Secretary of State was wrong in the

particular circumstances to attach any weight to it or its contents.

24. These decisions would indicate that the English Courts have not construed the words "no evidence" narrowly. The rule of "no evidence" is there

attracted not only in cases where there is complete lack of evidence, that is to say, where there is not a title or shred of evidence, but also in cases

where the evidence, if any, is not capable of having any probative value, or on the basis of which no Tribunal could reasonably and logically come

to the conclusion about the existence or non-existence of facts relevant to the determination. According to the English decisions, even though a

domestic tribunal may act on evidence not admissible according to legal rules in a Court of law, unless such evidence has some probative value in

the sense mentioned above, it would be a breach of natural justice and/or an error of law to found any adverse decision thereon.

25. Nearer home, the approach is not any the different. In State of Andhra Pradesh Vs. Sree Rama Rao, , it was held at page 1726 that in

considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials with regard to the

establishment of charge by evidence beyond reasonable doubt was not applicable. In a proceeding under Article 226, the High Court, not being a

Court of appeal over the decision of the domestic tribunal, was concerned to determine whether the inquiry was held by an authority competent in

that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice were not violated. Then follow the

following important observations:

Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably

support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article

226 to review the evidence and to arrive at an independent finding on the evidence...if there be some legal evidence on which their findings can be

based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding

for a writ under Article 226 of the Constitution

(underlining supplied).

26. This decision was approvingly referred to and relied upon in State of Andhra Pradesh and Others Vs. Chitra Venkata Rao, .

27. In Union of India (UOI) Vs. H.C. Goel, , the question as to the amplitude and width of the judicial review under Article 226 fell for

consideration in the context of the disciplinary proceedings against Government servants. It was observed that ""the High Court under Article 226

has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests, is not supported by any

evidence at all"" and that there was little doubt that a writ of certiorari can be claimed by a public servant if he is able to satisfy the High Court that

the ultimate conclusion of the Government in the said proceeding is based on no evidence. A conclusion on a question of fact, it was held, would

be assailable if it is manifest that there is no evidence to support it even assuming bonafides of the disciplinary authority. The following observations

made at page 369 are material from the point of view of the aspect under consideration:

In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of

evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but

the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the

evidence led in the enquiry is accepted as true does the conclusion follow that the charge in question is proved against the respondent? This

approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally (sic) the

impugned conclusion follows or not.

One of the charges against the delinquent in that case was that he had offered a currency note, which from its size and colour appeared to be a

100-rupee note, as bribe with the intention of persuading his superior to support his representation regarding seniority. The submission on behalf of

the delinquent was that the adverse finding of the disciplinary authority on the said charge was based on no evidence and that the order of penalty

was, therefore, invalid. The evidence showed that during the course of the delinquent's interview with his superior, he expressed his regret that he

had not brought sweets for his children. The delinquent during the course of the interview took out from his wallet a currency note which was

folded double and whose colour was blue and size was bigger than the usual ten-rupee or five rupee note. The evidence further showed that there

was no actual offer of the note to the superior, but an impression was created on the mind of the superior, viewing the whole thing in the context,

that a bribe had been offered to him. The superior was admittedly having an eyesight which was not perfect. The version of the delinquent was

that he had taken out from his pocket some papers to find out the letter relating to his appointment and that as; soon as his superior appeared to

discourage him, he put the said papers back in his pocket. The Supreme Court observed that it was not possible to say in the aforesaid state of

evidence that there was even an attempt to offer a bribe to the superior. There was merely a suspicion may be honest and genuine-entertained by

the superior, but such suspicion cannot be treated as evidence against the delinquent. In this context, it was observed as follows at page 370:

Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the

said purpose, mere suspicion should not be allowed to take the place of proof even in domestic inquiries. It may be that the technical rules which

govern criminal trials in Courts may not necessarily apply to disciplinary proceedings, but never the less, the principle that in punishing the guilty

scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held

under the statutory rules. We have very carefully considered the evidence led in the present enquiry and borne in mind the plea made by the

learned Attorney General, but we are unable to hold that on the record, there is any evidence which can sustain the finding....

(underlining supplied)

These observations apply with equal force to disciplinary inquiries held by the academic authority and their significance cannot be over-

emphasised. Be it noted that in this case, the Supreme Court appears to have treated the concepts of "no evidence" and "perversity" as

interchangeable as would appear from the following observations made at page 369:

It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the

Government is based on no evidence whatever. It is a conclusion which is perverse and, therefore suffers from such an obvious and patent error on

the face of the record that the High Court would be justified in quashing it.

28. The Board of High School and Intermediate Education U.P. Vs. Bagleshwar

Prasad and Others, , was as analogous case since the decision there impugned was that of an Examination Board recorded in an inquiry against a candidate charged with his having used unfair means at the examination. The charge was that the candidate (Roll No. 94734), who was the original petitioner, had given a wrong answer to one of the questions in one of the papers in Hindi in precisely the same form in which the said answer had been given by another candidate whose Roll No. was 94733, and that having regard to the identity of the mistaken answers, the delinquent candidate had either copied from the candidate bearing Roll No. 94733, or that he had connived at the candidate bearing Roll No. 94733. copying from his own answer book or that both had copied from a common source. The numbers of both the candidates were consecutive, but the sitting arrangement showed that whereas the candidate charged with malpractice occupied the third seat in the third row, the other candidate occupied the fourth seat in the second row. On the basis of the report of the Enquiry Committee, the Board passed an order cancelling the result of both the candidates. Both the candidates challenged the decision of the Board by way of a Writ Petition and the High Court, having found that there was no evidence in support of the finding that the charge was proved against the candidate bearing Roll No. 94734, set aside the orders in so far as it concerned the said candidate. On appeal, the Supreme Court reversed the decision of the High Court. It was observed at page 878 that it would be inappropriate in such a case to require direct evidence to show that the candidate could have looked at and copied from the answer written by the other candidate who was sitting behind him. In the matter of the adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence may not be available and the question will have to be considered in the light of probabilities and circumstantial evidence. As regards the case on hand, it was found that besides the circumstantial evidence consisting of the identity of the mistaken answers in the answer books of both the candidates, there were other circumstances which were ""relevant and significant"" and which were ignored while holding that the case was one of ""no evidence"". Those circumstances were considered at page 877; (a) as a result of the unhealthy atmosphere prevailing at the centre, examinations had not been

held there for some years, but on account of public pressure they were re-started, (b) at the examination held at the centre, unfair means were adopted on a very large scale by a large number of the 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 has to be observed in conducting examinations, (c) the invigilators themselves were so much frightened by the prevailing rowdyism and by pressure from influential people that they found themselves powerless to maintain discipline in the examination hall and to prevent copying and some of the invigilators had to be warned to be careful in future, and (d) on the day on which the examination in English was held and while the students were answering the paper, an answer paper by some outsider was dropped into the room fifteen minutes before the time to answer questions was over and the room in which the answer paper was thrown was the same in which the delinquent candidate was appearing for the Hindi examination. Having taken note of the aforesaid background, the Supreme Court observed as follows at pages 877-878:

...it would not be reasonable to exclude from consideration the circumstances under which the whole inquiry came to be held and the general background of the prevailing disturbed and riotous atmosphere in the Examination Hall] during the days that the High School Examination was held at the Centre....

...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.

(underlining supplied).

It was found on a consideration of overall circumstances of the case that the High Court was not justified in quashing the order passed against the concerned candidate.

29. In *M. Mayandi Vs. Director, Tamil Nadu State Transport Department*, , a

disciplinary inquiry was held against the driver of a State Transport bus (the appellant) on four charges. The disciplinary authority held all the four charges proved and dismissed the appellant. When the decision was challenged in the writ petition, the learned Single Judge found that charges 1 and 2 were unsustainable and that there was no material to support charges 3 and 4. The dismissal was, therefore, set aside. On appeal before a Division Bench, the finding recorded by the learned Single Judge on charges 1 and 2 was not questioned. However, the Division Bench thought that there was material to substantiate charges 3 and 4 and it, therefore, set aside the order of the Learned Single Judge. The Supreme Court held that the decision of the Division Bench appeared to rest on answers given by the Checking Inspector to two questions put to him on cross-examination. In answer to the first question, the Checking Inspector had said that the delinquent had stopped two other buses. The Supreme Court held that the Division Bench failed to note the drivers of the said two buses had denied that they were made to stop their buses by the appellant. In answer to the second question, the Checking Inspector stated, inter alia that the delinquent driver had refused to take his vehicle on line which created difficulty in clearing the traffic jam. The Supreme Court held that the refusal of the appellant to proceed with an over-crowded bus was the subject-matter of charge 2 and that since the correctness of the finding of the Learned Single Judge on charges 1 and 2 was not questioned before the Division Bench, the conduct of the appellant in refusing to move the bus must be held to have been justified. The Supreme Court concluded its decision in the following words:

We have gone through the evidence ourselves. We do not also find any evidence to substantiate charges 3 and 4. Accordingly we allow this appeal....

(underlining supplied)

30. On gleaning through these illustrative decisions and examining their rationes closely, it would appear that the ""no evidence"" rule has the same content and meaning in our country as in England ""No evidence"" does not merely signify total dearth of evidence; evidence which does not reasonably support the conclusion is also comprehended within the meaning of the said expression. In other words, cases where there is complete

lack of evidence and cases where the evidence, if any, is incapable of rationally leading to the conclusion reached, are both treated, on a par so far

the applicability of the rule of "no evidence" is concerned. In none of these decided cases, there was "no evidence" in the sense of there being utter

paucity of evidence. There was some evidence, direct or circumstantial, on the basis of which the domestic tribunal had reached the conclusion of

guilt. The grievance that there was "no evidence" was examined by applying the test whether or not, accepting the whole of the evidence as it

stood, the impugned conclusion followed legally or logically. In cases where direct evidence was not available, the totality of circumstances was

carefully considered and the challenge that there was no evidence in support of the decision was examined by applying the test whether

probabilities and circumstantial evidence justified the conclusion. Where direct evidence was available, the challenge was examined by applying the

test whether it was so thoroughly inconsistent with the rest of the evidence as to make it impossible of acceptance. Mere suspicion, even if honestly

and bona fide entertained on the basis of apparently cogent circumstances, was held to be out of bounds even in domestic inquiries, where the

principle that in punishing the guilty scrupulous care must be taken to see that the innocents are not punished, was found to apply as much as it

applies to regular criminal trials. In the ultimate analysis, the test which appears to have been applied is whether there was some material capable of

having any evidential value. If not, the case was held to fall within the mischief of the rule of "no evidence".

31. It would thus appear that the Court exercising the power of judicial review is to look upon the decision of the domestic tribunal as sacrosanct

so long as it rests on findings of fact which are supportable on evidence in the sense explained above. The limit of indulgence is reached if the

evidence does not meet with the above test or standard and the "no evidence" rule would then enable the Court to quash the decision on the

ground that it discloses an apparent error of law.

32. Against the aforesaid legal background, we shall first examine whether there was, in the instant case/any evidence to support the finding of

unfair practice recorded against the petitioner. It is not in dispute that the case against the petitioner is based substantially on circumstantial

evidence and that the evidence consists mainly of the apparent similarity of the admitted handwriting in the answer book of the petitioner and the disputed handwriting in the answer book of the "candidate bearing Roll No. 993. The only other evidence consists of an admission of the candidate bearing Roll No. 993 to the effect that he had not appeared in the examination and that the answer book purporting "to be his is not in his handwriting. As regards the latter circumstances, the minutes of the Committee which are on record do not show that the same was specifically brought to the notice of the petitioner and that he was given an opportunity to correct or contradict the same. Under the circumstances the said circumstance will have to be eliminated from consideration, for, to take the same into account would be manifestly unfair and unjust. That leaves in the field the sole circumstance consisting of the apparent similarity of handwriting perceived on visual inspection. Here again, the minutes "of the Committee read along with the affidavit-in-reply "filed "on behalf of the respondent-university show that what was noticed were ""certain similarities"" and more particularly that the letters ""A"", ""N"" and "S" were found to be similar in both the answer books. Certain other similarities in handwritings were also stated to have been pointed out to the petitioner. The petitioner was unable to offer any explanation for the seeming similarity, though he denied personation and any acquaintance with the other candidate. The finding of fact that the petitioner personated for the candidate bearing Roll No. 993 is based entirely on this evidence. The question is whether the case falls within the mischief of the ""no evidence rule.

33. Our learned Brother B.K. Mehta was persuaded to hold that since there were two sets of supplementaries where the handwriting appeared to be apparently similar and the Committee as well as the Syndicate had on visual comparison of those supplementaries arrived at the finding with regard to the guilt of the petitioner, it could not be said that there was ""no evidence"". May be, the material would not constitute sufficient evidence in a court of law or in a forum where the Evidence Act or the principles for appreciation of evidence are strictly applicable. However, adequacy of evidence being not a matter for consideration in the exercise of jurisdiction under Article 226, the petitioner's grievance was not redressable. The

question is whether our learned Brother, with respect, was right in taking the aforesaid view on the facts and in the circumstances of the case and in the legal perspective discussed above.

34. The science of comparison of handwriting is intricate and complex. Judgment on the resemblance or difference of the writing has to be arrived

at with respect to the general character of the writing, the forms of the letters and relative number of diversified forms of each letter, the use of

capitals, abbreviations, stops and paragraphs, the mode of effecting erasures, or of inserting interlineation of corrections, the adoption of peculiar

expressions, the orthography of the words, the grammatical construction of the sentences and the style of composition, and also on the fact of one

or more of the documents being written in a feigned hand. (See Sarkar On Evidence, Thirteenth Edition, page 707). It is for this reason that even

courts of law with their wide experience have been often cautioned against resorting to comparison of handwritings although Section 73 of the

Evidence Act, 1872 specifically authorises the Court to compare the disputed signature or writing with others admitted or proved to have been

signed or written by that person.

35. In *Kesarbai v. Jethabhai* AIR 1928 PC 227, LORD ATKIN, speaking for the Judicial Committee, sounded a telling warning in the following

words at page 281:

They (Their Lordships) would have thought it unsatisfactory and dangerous in any event to take a decision in such a case as this on the correct

determination of the genuineness of the signature by mere comparison with admitted signatures, especially without the aid of evidence of

microscopic enlargement or any expert advice.

Be it noted that in that case, a Division Bench of the Bombay High Court had compared the disputed endorsements upon a cheque with admitted

signatures and felt no doubt that the endorsement were genuine. Having made the above observations, the Judicial Committee compared the

endorsements with the admitted signatures and it was unable to feel the certainty which was expressed by the Appellate Bench of the High Court.

This case appropriately illustrates how even experienced Judges at fairly high level are likely to fall into an error in basing conclusions on

comparison made with naked eyes and without the assistance of evidence in the

shape of enlargements or expert opinion.

36. In *Sri Sri Sri Kishore Chandra Singh Deo Vs. Babu Ganesh Prasad Bhagat and Others*, , the question was whether a letter which was a piece

of evidence in the case was genuine. The trial Judge answered the question in the negative on the ground, inter alia, that the signature on the letter

was dissimilar to the admitted signature. On appeal, the High Court was of the opinion that there was no such dissimilarity. In this connection, the

Supreme Court observed as follows at page 318:

But conclusions based on mere comparison of handwriting must, at best, be indecisive, and yield to positive evidence in the case.

37. In *The State (Delhi Administration) Vs. Pali Ram*, , the following pertinent observations are found at page 21:

Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the

evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of

a handwriting which forms the sheetanchor of the prosecution-case against a person accused of an offence, solely on comparison made by himself.

It is, therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out

whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.

38. In *Murarilal v. State of M.P.* AIR 1980 SC 531, while rejecting the argument that the Court should not venture to compare writings itself, as it

would thereby assume to itself the role of an expert, on the ground that Section 73 of the Evidence Act expressly enables the Court to compare

disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written, it

was observed that the duty of the Court to compare the writings and to come to its own conclusion cannot be avoided by recourse to the

statement that the court is no expert. However, at the same time, the Supreme Court laid down guidelines for the discharge of the duty in the

following words at page 537:

Where there are expert opinions, they will aid the Court. Where there is none, the Court will have to seek guidance from some authoritative

textbook and the Court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence.

39. The catena of decisions leaves no room for doubt that it has been considered imprudent to base the conclusion of guilt solely on the bare

comparison of disputed and admitted writings, especially when it is made without the aid of evidence of expert opinion or microscopic

enlargements or without guidance from some authoritative text book and without any experience and knowledge on the part of the person making

the comparison, since such inference has been held to be indecisive and it has been characterised as unsatisfactory and dangerous and inadvisable

to take an adverse decision on the strength of mere comparison.

40. If this is the law governing the "comparison evidence" at regular trials before Courts of law, where statute permits resort to comparison by an

experienced Judge, and if this is how mere visual comparison of handwriting by a person who is a learned in law and wise in the ways of life but

who possesses no expertise in the science of handwriting, is frowned upon by the highest courts, can the "comparison evidence", upon which the

Committee acted in the instant case, by any stretch of imagination, be said to have any evidential value? Is it evidence which would reasonably

support the conclusion recorded against the petitioner, or is it mere suspicion even if honestly and bona fide entertained? Is it evidence which tends

logically to prove the crime of personation and is it material which, as a matter of reason, has some probative value? We are of the view, with

respect, that the answers to these questions cannot but be in the negative. Apparent similarity of handwriting in the answer books, perceived on a

bare visual comparison by a pair or even pairs of untrained, uninitiated and inexperienced eyes, may be sufficient to sustain a suspicion, but it

cannot, without something more, constitute evidence reasonably capable of supporting the finding of guilt, especially when there was, in the instant

case, a clear defence of denial based on the plea of alibi and the lack of any acquaintance with the candidate allegedly personated which does not

appear to have been considered at all. The decision reached by the Committee, therefore, is apparently erroneous in law and it is manifestly

contrary to natural justice.

41. We, however, want to be guarded against being understood as laying down that under no circumstances comparison of handwriting by a domestic tribunal would constitute evidence. IF, for example, the domestic tribunal consists of persons who are experienced or well-versed in the art of comparison, or it is assisted by an expert opinion, or it has before it microscopic enlargements of the disputed and admitted hand-writings and it compares them with the aid of authoritative text books, or there is some inherent or intrinsic evidence in the document/s under consideration which lends support to the conclusion reached upon comparison or where the totality of circumstances coupled with the background material and probabilities reasonably support such conclusion, the "no evidence" rule may not be attracted. Such, however, is not the present case and we need not, therefore, dilate further.

42. Before parting with the consideration of this question, it requires to be mentioned that on behalf of the respondent-University strong reliance was placed on the decision in Prem Parkash Kaluniya Vs. The Punjab University and Others, . That case also arose out of the disciplinary action taken against a candidate at an examination who was charged with copying. The sub-examiner, who had examined the answer books of two candidates, one of whom was the appellant before the Supreme Court, made a report that the other candidate appeared to have copied the answer of one of the sub-questions from the answer book of the appellant. The head examiner, while forwarding the report of the sub-examiner, stated that he too was of the same opinion on examining the answer books. According" to the head examiner, the other candidate was a very weak student as was evident from his performance in the rest of the paper and from the fact that he was unable to give correct solution to the other sub-question. The said candidate had, however, tackled the sub-question, in respect of the answer of which copying was suspected, in an almost satisfactory way. Although he had put a wrong value in a sum of three numbers, he had still got the same result of addition as in the answer book of the appellant. The head-examiner also pointed "out certain other similarities in the answers. The appellant's result was withheld and he was required to answer a questionnaire. The appellant denied that he had copied from the other candidate or that he had allowed him to copy from his

own answer book. The Standing Committee, which inquired into the matter, stated all the relevant facts and came to the conclusion that the Head-Examiner had thoroughly examined the answer books of both the candidates and had pointed out the common mistakes committed by them. The mistakes were such which could have been committed only if copying had been done from a common source or by the two candidates from each other. The Standing Committee disqualified the appellant from sitting in any examination for two years. The decision of the Standing Committee was challenged in a Writ Petition under Article 226 and the same was dismissed in limine. On appeal it was, inter alia, urged on behalf of the appellant before the Supreme Court that the finding of the Standing Committee was based on no evidence. The Supreme Court rejected the submission holding, inter alia, that it was for the Standing Committee to arrive at its own conclusion on the evidence before it and that the same could not be reexamined except on very limited grounds which were not established. It was held that the finding of the Standing Committee could not be said to have been based on no evidence.

43. We are unable to appreciate how this decision helps the respondent-University. Undoubtedly, the case was one of circumstantial evidence in the context of misconduct at an examination. However, the salient features of the case distinguish it from the case on hand. In that case, the finding with regard to malpractice was based on intrinsic or inherent evidence in the shape of similarity of answers. There were common mistakes committed by both the candidates. The mistakes were such which could have been committed only if copying had been done from a common source, or by the two candidates from each other. The other candidate was found to be a weak student and his overall performance in the rest of the paper showed that he was unable to give correct solution. Still, he tackled the question, where copying was found, in an almost satisfactory way. The probabilities and circumstantial evidence as a whole coupled with the inherent features of the case led the Supreme Court to reject the submission based on the "no evidence" rule. In the instant case, as pointed out earlier, the sole evidence consists of bare comparison and there is no other intrinsic or extrinsic evidence lending assurance to the conclusion reached on the basis of mere comparison.

44. We would not however, like to rest our judgment solely on this ground. The slender material before the Committee and the procedure adopted by it for sifting the evidence, if any, before it, could not possibly have led any body of persons, acting reasonably, to arrive at the determination reached by the Committee and, on the basis of the report and the material gathered by the Committee, it would be impossible for any academic authority, acting fairly or justly, to find the petitioner guilty of personation. The decision adverse to the petitioner arrived at by the University must, therefore, be held to be perverse and ultra vires on an overall consideration of all the material facts and circumstances of the case including his defence.

45. On both these grounds, therefore, respectfully differing from our learned Brother B. K. Mehta, we take the view that the decision adverse to the petitioner arrived at by the Committee, and subsequently by the University, is liable to be quashed and set aside.

46. One more aspect which has a bearing only on the quantum of penalty must be touched alternatively, and even independently. The petitioner has been visited with the penalty of debarment from appearing at any examination to be held by the University or joining any affiliated college or recognised institution upto May 31, 1984. The bar imposed accordingly operates for a period of five years. The question is: Even assuming that the petitioner is guilty of personation, is the penalty proportionate to the proved misconduct? We do not wish to minimise the depravity of a person guilty of personation at an examination, nor do we make light of the passionate plea advanced on behalf of the University, backed by the weighty authority of judicial pronouncements of the highest Court, that decisions of educational bodies, like Universities and Examination Boards, in disciplinary matters relating to malpractices at examinations, should not be ordinarily interfered with. Still, however, one cannot overlook that the doctrine that every statutory power must be exercised reasonably is too firmly entrenched in our jurisprudence to brook any refutation and that the exercise of disciplinary power is not free from the said inhibition or limitation. The quantum of penalty, if it assumes disproportionate dimensions, may bear upon the reasonableness of the exercise of the disciplinary power and, in the result, it may vitiate, at least, the ultimate decision on

penalty. In the field of Industrial Law, when the award of punishment for misconduct was a matter for the management to decide, the proposition

was well-established that if there was justification for the punishment imposed, the Industrial Tribunal should not interfere, but where the

punishment was so disproportionate that no reasonable employer would have ever imposed in like circumstances, the Tribunal may treat such

imposition of punishment as itself showing victimisation or unfair labour practice (See Hind Construction and Engineering Co. Ltd. Vs. Their

Workmen, and Management of The Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal, . What

has been said in this connection in the field of Industrial Law is relevant even in the context of judicial review of the penalty imposed in the

disciplinary jurisdiction exercised by statutory bodies like the University. Having regard to the wide perspective and pervasiveness of Article 14,

the penalty imposed in any such disciplinary proceeding cannot be so disproportionate to the misconduct proved that no reasonable person would

have ever imposed in like circumstances. The arbitrary, unjust and unfair exercise of penal powers would be manifest under such circumstances

and such an action would constitute a ""right and just and fair"" decision. If there is any statutory instrument prescribing minimum penalty for any

specified misconduct, which is grossly disproportionate and which leaves no discretion with the disciplinary authority, such instrument and the

action thereunder will both be exposed to the risk of a challenge under Article 14; in the absence of such an instrument, the order imposing the

disproportionate penalty will be laid bare to a similar challenge.

47. Yet another aspect which is relevant is the requirement of taking into consideration all the material aspects before deciding upon the quantum of

penalty. The age, maturity, antecedents, family background, motivation, socio-economic factors, role played in the commission of malpractice or

unfair practice, etc. are all factors which must enter into account in the quantification of penalty in disciplinary jurisdiction even in the academic field.

Besides, though penalties are imposed with the end in view of creating a deterrent effect, the current thinking in penology even in the context of

hardened criminals is that reformation and curative technology are also as much a part of penalty procedures as retribution. This thinking must be

reflected with greater force in the disciplinary jurisdiction exercised by the academic bodies who deal with delinquents qua whom they are in loco

parentis. The perpetrator of the malpractice or unfair practice at the examination, in most of the cases, is a youth at the threshold of life. To deprive

him of education and an opportunity to secure academic qualification over an unreasonably long period might do more harm than good and his

channelisation into good and useful life, which is the prime object of education and one of the principal purposes underlying the penalty, might be

thereby frustrated.

48. Against the background afore said, there is no escape from the conclusion that the bar of five years imposed in the case was far too excessive

and unjust. Our learned Brother B.K. Mehta expressed the considered view that, on the facts and in the circumstances of the case, the penalty of

debarment from appearing at the examination for a period of one year would meet the ends of justice. He recommended to the respondent-

University to review the question of penalty accordingly if requested by the petitioner. Even the Division Bench which dealt with the matter at the

admission stage made a similar recommendation. On both the occasions the recommendation was obviously made because it was felt that the

penalty was far too excessive although the feeling might not have found expression in so many words. However, both the times, the University

regretfully failed to take notice of the qualms of judicial conscience and it refused to review the penalty. The grounds advanced indicate that the

refusal was based on a total misconception. As we have indicated earlier, the question of penalty had to be examined in each case on the basis of

the peculiar facts and circumstances the there-in. Minimum and maximum penalty may be prescribed within reasonable limits. Within those

parameters, the quantum of penalty may, and more often than not, will differ from case to case depending upon its varying features. To believe,

therefore, that to treat one errant student differently from another in the matter of imposition of penalty, where both are found to have committed a

similar malpractice, would necessarily expose the University to the charge of discrimination, betrays ignorance of the true principle governing the

exercise of discretionary powers in the penological field. In fact, imposition of uniform penalty in all cases involving a similar malpractice, without

regard to the presence or absence of relevant circumstances bearing on the quantum, may sometimes invite the charge of non-application of mind

or arbitrary exercise of power. Under the circumstances, had we not decided on merits in favour of the petitioner, we would have certainly

interfered with the grossly disproportionate penalty imposed upon the petitioner and quashed the impugned decision in so far as it relates to

penalty. In view of the overall circumstances of the case, including those mentioned in the judgment of our learned Brother B.K. Mehta, and having

regard to the fact that the petitioner has undergone penalty for a period approximately of 2"" years, we would have precluded the University from

reconsidering the question of penalty and directed it to treat the chapter as closed.

49. In the result, the appeal succeeds and it is allowed.

50. The judgment under appeal is set aside. Rule is made absolute on the main Writ Petition by quashing and setting aside the impugned decision of

the Syndicate of the respondent. University and by directing the respondent-University to forthwith declare the result of the petitioner for the First

Year B.A. Examination held in the month of March/April, 1979. The respondent-University shall forthwith permit the petitioner to attend the

classes on the basis of the declaration of such result. The petitioner shall be entitled to his costs throughout.