
(2009) 08 AHC CK 0187
In the Allahabad High Court

Sona Verma

APPELLANT

Vs

Lucknow University and Others

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Citation : (2009) 08 AHC CK 0187

Hon'ble Judges : S.S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.S. Chauhan, J.—This petition has been filed with the prayer that the orders dated 3.9.2007 and 23.3.2009 passed by the opposite party No. 4 may be quashed and further be quashed after summoning the original from the opposite party No. 3.

2. The dispute centres round the fact in this case is that certain students raised protest against implementation of recommendation of the Lyngdoh Committee. The University authorities expelled certain students on account of the aforesaid reason.

3. Thereafter, Writ Petition No. 7936 (M/B) of 2006 was filed against the illegal expulsion of the students from the University. While entertaining the PIL a Division Bench of this Court passed an order in favour of the petitioner and other similarly situated students for appearing in B.A. final year examinations at Gyanodya Mahavidyalaya, Madion, Lucknow over ruling the expulsion to limited extent. It is stated that the said examinations were conducted under heavy police force and under the authorities of the University. The petitioner appeared in the Ist, IInd and IIIRD papers of Social Science of B.A. IIIrd year on 7.8.2007, 8.8.2007 and on 9.8.2007 respectively and the Ist, IInd and IIIRD papers of Political Science, B.A. III rd year on 17.8.2007 and 18.8.2007 and 19.8.2007 respectively. It is alleged that during the second paper of Social Science B.A. IIIrd year one Dr. R.C. Tripathi misbehaved with the petitioner and maliciously

searched the petitioner six times during the period of three hours. The petitioner protested and asked the University authorities to call women Inspector/Constable to search her, on account of which the Invigilator became too annoyed and threatened the petitioner to show the power of the pen and her copy was taken away forcibly. The petitioner on the very next day i.e. 9.8.2007 came to know through a news item published in the newspaper that the petitioner has been caught for using unfair means in the examination. The petitioner thereafter moved an application and she was allowed to appear in the Ist, IInd and IIIrd papers of Political Science of B.A. IIIrd year examinations, which were held on 17th, 18th and 19th of August, 2007, but the result of the petitioner was not declared. It is alleged that no notice was ever served on the petitioner and the cancellation of the petitioner's examination followed on account of use of unfair means. Hence this petition.

4. Submission of petitioner in person is that since the authorities were hellbent to teach a lesson to the students, who have protested against implementation of recommendation of the Lyngdoh Committee and were also determined to put an end to vandalism prevailing in the premises, exceeded their limit in the process and victimized certain students like the petitioner with ill motive and malicious intention. The authorities were fighting with the students as like the enemy and not as like students, who have their democratic right to protest in a peaceful manner. It is also submitted that the petitioner persistently demanded the material, which was collected from her from the very inception, but it was never showed to her. She further submits that the University authorities should have retained the copy and the material, which was recovered from her on account of the fact that the litigation was already going on in this Court and under the Court orders these limited students have appeared and if any unfair means was used by these students, then the same ought to have been retained by the University. The argument of the counsel for the University that lakhs of students appeared, is a misconceived argument as the petitioner and others were a special category students, who were limited in number and appeared under the orders of this Court. According to the University authorities, as alleged they have tainted students and special vigil was being kept upon them and heavy force was also deployed at the time of examination and in these circumstances it was not possible for the petitioner to have dared to use unfair means. Learned Counsel for the University, on the other hand, has submitted that it was not possible for the University to have retained the record of unfair means specially when lakhs of students are appearing. The record is destroyed after three months and, therefore, it is not possible for the University authorities to produce the material, which was seized from the petitioner. But he has produced UFM Register-2007 and in the said register the name of the petitioner is entered. The tabulation chart of B.A. IIIrd year has also been produced in which against the name of the petitioner it has been shown as the case of unfair means. The UFM Result Notice Dated 3.9.2007 has also been produced to give force to his argument that the petitioner was caught using unfair means.

5. I have heard petitioner in person and Sri Upendra Nath Mishra, learned Counsel for the University and gone through the record.

6. The primary point to be considered in this case is that the petitioner was appearing as a special case under the orders of the Division Bench of this Court overruling the expulsion to limited extent and when heavy force was deployed then whether the petitioner would have indulged into using unfair means can be accepted or not. The petitioner's contention is that she was harassed during the course of examination by Dr. R.C. Tripathi by disturbing her six times and when she demanded that woman Inspector/Constable may be called for to take a search of the petitioner, the same was not done and the copy was snatched away and on the very next day i.e. 9.8.2007 in the morning the petitioner came to know through a news item published in the newspaper that she has been caught using unfair means. Thereafter, the petitioner demanded the material, which was recovered from her, but that was never supplied to her.

7. Learned Counsel for the University has argued that as lakhs of students appear, therefore, the records are not possible to be retained.

8. It is surprising to note that the petitioner was appearing as a special examinee under the orders of this Court and litigation was also going on in this Court. Therefore, utmost care and caution ought to have been taken in case the University authorities proceeded against any of the students for using unfair means. It was a delicate issue to be gone into by the Court if any challenge was to be made in the wake of the past litigation and the action of the University authorities by expelling hundreds of students under the garb of the vandalism. The University authorities must have kept in their mind and must be knowing that if they were going to charge such a student with using unfair means, then certainly the challenge would be there in the Court and they have to meet out the charges. Apart from it, the record indicates that no notice was ever served upon the petitioner to explain as to what material has been recovered from her and how she has indulged in using unfair means.

9. Learned Counsel for the University has failed to produce any record except an endorsement in the UFM register and the tabulation chart. The apex Court while dealing with an identical problem in the case of Sarat Kumar Panigrahi Vs. The Secretary, Board of Secondary Education, Orissa, has heavily relied upon the insistence of material used in the unfair means and has observed that in absence of any such material it cannot be presumed that one can be held guilty for using unfair means. The apex Court in para 5 of the judgment ruled as under:

5. During the course of hearing in this Court, upon the request of the appellant, the respondent Board has made available the record of the proceedings dated 20-3-2001 from its custody. Without centering into an enquiry into disputed questions of fact and recording a finding thereon, suffice it for our purpose to notice two glaring facts. The report which is alleged to have been prepared on the date of the incident under signatures of the Central Superintendent is in a

pro forma prescribed for the purpose of preparing a report of any malpractice detected at the examination hall/centre. The pro forma contemplates columns 16 and 17 being signed by the invigilator, but the invigilator has not signed the report. Admittedly, the Centre superintendent, who has signed the report, was not present in the hall. Then there is controversy, firstly, as to whether the seized material was a handwritten slip or a printed paper, and secondly, as to whether the paper was seized from the floor of the examination hall or from inside the pocket. Two facts are undisputed: firstly, that the seized paper was not related with the examination - as per column 20 of the pro forma report, and secondly, it was not used - as per column 11 of the pro forma report. In these proceedings the candidate has lost one year and at the subsequent examination taken by him he has come out with flying colours.

10. On the reason given in para 5 the apex Court further expressed doubt as to whether in the aforesaid circumstances the material (slip of paper) was really seized in the manner in which it is alleged to have been seized. For convenience the first two lines of para 6 of the aforesaid judgment quoted as under:

6. We have some doubts if the material (slip of paper) was really seized in the manner in which it is alleged to have been seized.

11. In absence of any material connecting the petitioner with the use of unfair means except an entry in the UFM register and tabulation chart, will lead only to the conclusion that in the wake of foregoing circumstances the University authorities were having no material and it seems that on account of the tug of war going on between these students and the University authorities, the University authorities were hellbent to teach a lesson and in furtherance thereof they proceeded to charge the petitioner with the use of unfair means, but they have failed to indicate any material on the basis of which the petitioner can be connected with the use of unfair means. Learned Counsel for the University has placed reliance upon the decision of the apex Court in the case of National Board of Examinations Vs. G. Anand Ramamurthy and Others,

12. The apex Court in the aforesaid case was faced with altogether a different problem and it was not a case of use of unfair means. Therefore, reliance placed by the counsel for the University on the aforesaid case is beside the point. Having heard the petitioner in person and counsel for the University and given my anxious consideration to the issue involved in this case, the only one irresistible conclusion, which can be drawn in the facts and circumstances of the case, is that the University authorities have failed to produce any material to connect the petitioner with the use of unfair means. Merely entry in the UFM register would not lead to the conclusion that the petitioner has indulged in use of unfair means. The argument of the counsel for the University is a face saving argument and to by-pass the liability for producing the material by saying that the record has been weeded out and is retained for a period of three months only.

13. As stated above, the University authorities should have acted with more

sense of responsibility and in order to prove their impartiality they ought to have produced the material indicated something which states that this material was recovered from the petitioner. The UFM register does not indicate anything except the entry of unfair means. The Court cannot travel beyond the evidence, which has been produced before it and in the present case looking to the background under which the students were permitted to appear in the examination, the argument of the counsel for the University that the record has been weeded out, cannot be accepted. Therefore, the impugned orders cannot be sustained in law and are liable to be quashed.

14. In the result, the petition is allowed. The orders dated 3.9.2007 and 23.3.2009 are hereby quashed and the opposite parties are directed to declare the result of the petitioner within a period of ten days.