

(1959) 10 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2072 of 1959

Sri Calcutta Singh

APPELLANT

Vs

Registrar, Banaras Hindu University and Another

RESPONDENT

Date of Decision : 29-10-1959

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1960 All 642

Hon'ble Judges : D.S. Mathur, J

Bench : Single Bench

Advocate : S.N. Kacker, for the Appellant; Gopi Nath Kunzru and A.N. Kaul, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Mathur, J.—This is a petition under Article 226 of the Constitution of India by Calcutta Singh for the issue of a writ of certiorari to quash the order dated 11-6-1959 passed by the Registrar, Banaras Hindu University, respondent No. 1, and also Resolution No. 61 dated 8-6-1959 passed by the Academic Council of the Banaras Hindu University on the basis of which the Registrar issued the order. A request was also made for the issue of a writ of mandamus to direct the respondents to declare the result of the petitioner of the M. Sc. (Tech.) Previous Examination, 1959, and not to interfere with the petitioner's right of pursuing the M. Sc. (Tech.) Final Examination during the current session.

2. The petitioner was a student studying in the M.Sc. (Technical) Previous Examination of the Banaras Hindu University and in the month of May, 1959 was appearing in the Previous Examination conducted by that University. He was examined on three different dates, May 1, 4 and 6, 1959, in theory papers and the practical examination finished on 18-5-1959. The incident which has led to the rustication of the petitioner for one year took place on 6-5-1959 at about 9.30 A.M. when he was appearing in the Industrial Chemistry paper. The petitioner's case is that the invigilator, meaning thereby Shri. S. N. Roy

Chaudhary, found a small chit of paper, about 6" x 3", lying on the floor near the petitioner's chair, and on enquiry, the petitioner informed the invigilator that he had no knowledge of the paper nor was it in his hand-writing and that he had not in any way utilised the paper in answering questions.

The Invigilator is said to have departed feeling satisfied, but at the close of the morning sitting of the examination when answer books were being collected, the said invigilator called upon the petitioner to accompany him to the room of the Superintendent Examination. The petitioner's case further is that a blank printed form was handed over to him to answer certain queries; that no report had been entered in the printed form against columns meant for the report of the invigilator and the forwarding note of the Superintendent Examination; that he (petitioner) refused to fill in the printed form but he was threatened by the Superintendent Examination that if he did not fill in the form in question the matter would be decided against him ex parte on the basis of the reports which the invigilator and the Superintendent proposed to make to the Registrar; and that it was then that he gave his explanation on the printed form denying the recovery of the paper from his possession. There is some difference in the explanation now furnished by the petitioner and as given in the form itself. Considering that one can make a mistake in good faith it will be proper to treat the explanation as contained in the form as the case of the petitioner. The explanation so furnished is as below:

"I have no concern with that paper and also do not know how it was found near me. For information of your Sir, I may add that I have been shown that paper that is not mine writing."

3. The petitioner was allowed to appear in the Practical examination but his examination was cancelled under a decision taken by the Academic Council of the Banaras Hindu University. It was on 15-6-1959 that the petitioner received a letter, annexure "A" to the affidavit, from the Registrar of the Banaras Hindu University informing him that he had been rusticated for one year for using unfair means at the examination of 1959 and that the petitioner would not be permitted to appear at any of the University examination before 1960, vide Resolution No. 61 of the Academic Council passed in its meeting held on 8-6-1959. The petitioner's case is that this decision was taken without giving him an opportunity to meet charges levelled against him. The above decision is sought to be quashed on the ground that it violates the principles of natural justice. The petitioner made representations to the Vice-Chancellor but they were dismissed, and it was on 28-8-1959 that he moved the present petition to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

4. As would appear from the counter-affidavits of Dr. S. Prasad, Reader in the Department of Pharmaceutics, Banaras Hindu University, and of Sri V. L. Nighoshkar, Assistant Registrar (Academic) of the Banaras Hindu University, Sri S. N. Roy Chaudhary had left India in August, 1959 for further studies in the United States of America and is not at present in India. This assertion has not

been controverted by the petitioner. The respondents were, therefore, not in a position to file a counter affidavit sworn by Sri S. N. Roy Chaudhary.

But Dr. S. Prasad, who was the Superintendent Examination that day, has filed a counter-affidavit chiefly based on his personal knowledge. The counter-affidavit of the Assistant Registrar (Academic) is based on the information received by him. It is, however, clear from his counter-affidavit that the petitioner was not afforded an additional opportunity to submit his explanation before the Academic Council. The decision was taken on the basis of the explanation furnished by the petitioner soon after the examination.

5. The case of the respondents is that prior to the examination an announcement was invariably made in the examination hall that students who had brought with them any book, or loose sheets of paper or note-book, should keep them outside the examination hall on the takhat placed there for the purpose, and such announcement was made on 6-9-1959 also; and that in addition, printed notices to the same effect were pasted on the main gate and other gates of the examination hall. With regard to the facts as they occurred on 6-5-1959 at about 9-30 A.M. it is mentioned that when Sri S. N. Roy Chaudhary, invigilator caught the petitioner with the slip of paper, he (Dr. S. Prasad) was behind the invigilator, and he had himself seen Sri S. N. Roy Chaudhary taking out a piece of paper from under the thigh of the petitioner; and that when Sri S. N. Roy Chaudhary took the paper in his possession it got torn in two pieces, one of which was taken away by the petitioner and torn to pieces.

It is denied that the said paper was lying on the floor near the petitioner's chair and table, as alleged by him. Dr. S. Prasad further affirmed in the counter-affidavit that at about 9.30 A.M. while the examination was continuing, Sri S. N. Roy Chaudhary took the petitioner along with the said paper and answer book to the seat of the Superintendent, namely, Dr. S. Prasad, where he was sitting; that the petitioner was aware of the charges made against him; that when he was called upon to give his explanation in the printed form, the petitioner went away to his seat saying that he would submit his explanation after the examination was over; that at about 9.30 A.M. the invigilator and thereafter the Superintendent Examination himself wrote down their reports on the printed form; and that when the petitioner came at 10 A.M. after finishing his paper he was given the form On which the reports had already been written and the petitioner gave his explanation after reading the said reports. Dr. S. Prasad denied that the petitioner had been threatened to submit his explanation. From para 9 of the counter affidavit of Dr. S, Prasad, it further appears that the paper, which was discovered from under the petitioner's thigh, contained answers to the questions set in the M. Sc. Industrial Chemistry, Paper V (Organic Chemistry) of that day.

6. It has been urged on behalf of the petitioner that the facts as contained in the counter affidavit of Dr. S. Prasad should not be accepted chiefly for the reason that they are self-contradictory. This contention does not at all appeal to me. It is

true that the facts were not given in detail in the reports as entered in the form annexure T to the counter affidavit; but this cannot show that Dr. S. Prasad later on made up a story to have the petitioner suitably departmentally punished. It will be found that the version of Dr. S. Prasad, as contained in the counter affidavit, is in substance the same as was noted in the above form.

It was first of all contended that the petitioner could not have torn one piece of paper into small bits, specially when the invigilator and the Superintendent were nearby. There have been instances where examinees had torn paper into pieces and swallowed them to avoid their being caught. I see no improbability in the petitioner tearing a piece of the paper into bits. The invigilator and also the Superintendent were concerned with the paper which had been found, and they may not have thought of taking into their possession the other piece which had been torn to bits. It was further suggested that if the Superintendent was following the invigilator, the petitioner would not have been taken to the seat of the Superintendent. The petitioner had adopted an unfair method but had not taken the law into his own hands. He was not making any attempts to assault the invigilator.

In such circumstances, the Superintendent, who was at some distance from the invigilator, would not have moved forward to help the invigilator, The Superintendent could go back to his seat knowing that the petitioner would be brought there for submitting his explanation. A perusal of the form, annexure "1" to the counter affidavit, will make it clear that both the invigilator and the Superintendent had entered their reports in parts III and IV of the form at 9.35 A.M. It is the case of both the parties, namely the petitioner and Dr. S. Prasad, that the Petitioner submitted his explanation at about 10 A.M. This would show that both the invigilator and the Superintendent had recorded their reports before the explanation of the petitioner was obtained. This will also indicate that the Superintendent must have gone back to his seat to fill in the form in accordance with the rules and also to call for the explanation of the petitioner.

7. The petitioner's case is that at the time he was called upon to give his explanation and he did record his explanation, the form was blank and both the invigilator and the Superintendent had not entered their reports in the form, nor were their reports shown to him at the time his explanation was obtained. This contention is falsified not only by the form, annexure "1" to the counter affidavit but also by the conduct of the petitioner himself. As mentioned above both the invigilator and the Superintendent recorded their reports in the form at 9.35 A.M. while the petitioner wrote his explanation on the form at 10 A.M. Both the reports were thus available at the time the petitioner furnished his explanation and it would have been quite natural for him to see what reports the two officers had made.

8. The petitioner had submitted two representations to the Vice Chancellor of the Banaras Hindu University. It is of significance that in the first representation made on 30-6-1959 it was not alleged that the form on which his explanation

was obtained was blank or that he was not informed that time of the charges which were being made against him. In the second representation also it was not pleaded that the form was blank at the time he was made to give his explanation. It was, however, added that the reports made against him were never made known to him, to enable him to contradict the reports to the satisfaction of the-council. In other words, the plea that the explanation was obtained on a blank printed form was taken for the first time in the present proceeding. In any case, such a plea was not raised at the initial stage. I, therefore, find no reason to disbelieve the version as given by Dr. S. Prasad.

9. The finding of fact can now be summarised in a few words, namely that the petitioner gave his explanation as contained in the form, annexure "1" after seeing the reports of both the invigilator and the Superintendent, and that the Academic Council did not call upon the petitioner to submit his additional explanation and to lead evidence in defence. The petitioner was also not called upon to indicate whether he wanted to cross-examine the invigilator and the Superintendent, in other words, no opportunity was offered to him to cross-examine the witnesses whose reports were being used against him.

10. This Court has not taken a consistent view as to whether it is necessary or not for the Academic Council to itself afford an opportunity to the examinee against whom action is being taken, not only to submit his explanation afresh but to cross-examine the witnesses and to lead his evidence in defence. In *Jai Prakash Sharma v. Registrar, Roorkee University, Roorkee* 1957 All LJ 213 where Malhotra, J. took a view in favour of the petitioner. In coming to the decision he placed reliance on the Bench case of *Ghanshyam Das Gupta and Others Vs. Board of High School and Intermediate Education U.P., Allahabad*, to which I shall make a reference later. A similar view was taken by Tandon, J. in *Son Pal Gupta Vs. The University of Agra and Another*, . A contrary view was, however, taken in *Sheo Saran Prasad v. Banaras Hindu University Civil Misc. Writ No. 698 of 1955 D/- 14-10-1955 (All)*; *Ram Dhani Singh v. Banaras Hindu University Civil Misc. Writ No. 3786 of 1956 D/- 8-3-1957 (All)* and *Shyam Behari Misra v. Banaras Hindu University Civil Misc. Writ No. 2142 of 1957 D/-29-7-1958 (All)*. With respect I am inclined to agree with this latter view. I would give my reasons later.

11. The Division Bench case of (S) *Ghanshyam Das Gupta and Others Vs. Board of High School and Intermediate Education U.P., Allahabad*, nowhere lays down that a fresh opportunity to furnish explanation must be given by the Court or authority which passes the final order. Further, the facts of this case are different. Therein the examinees whose examinations had been cancelled were not furnished any opportunity, neither at the time of the examination nor by the Examinations Committee, to give their explanation on the charges on the basis of which the result was being cancelled. The Examinations Committee of the Board had taken action when it was found that many examinees had copied and this was detected after the examination was over and the answer books were being examined. Consequently, there was no occasion to obtain the explanation of the

examinees at the time the examination was being conducted and when their explanation was not obtained before the cancellation of their examination, no opportunity was furnished to them to explain why it should not be inferred that a particular examinee had not copied the answers. Without furnishing such an opportunity, the examinees were likely to be prejudiced.

It sometimes happens that an examinee who is poor in studies but manages to copy answers from the answer-book of an intelligent student or to obtain answers from a common source may be able to answer a question or two in addition. The answers given by many examinees can, therefore, be word by word the same; and one not acquainted with the examinees can, in good faith, form an impression that the examinees had copied from the answer-book of one who was poor in studies. It can, therefore, easily happen, if no opportunity is furnished to the examinees to submit their explanation, that a good scholar may be rusticated, while one who is likely to fail would be successful in the examination, may be with honours. But if the examinees are given an opportunity to submit their explanation, the good boy will always say that his past record may be perused in deciding whether he had or had not copied the answers.

He may also offer to be examined without notice in the subject. This can be an additional ground to hold that condemnation of examinees without calling for their Explanation is in violation of the principles of natural justice, In the present case, however, the explanation of the petitioner was obtained after both the invigilator and the Superintendent had recorded their reports on the printed form, and the petitioner himself perused such reports. At the time he submitted his explanation he was aware of the charges levelled against him and consequently he could answer them to give his own version without any difficulty. In view of the explanation furnished by the petitioner it cannot also be said that he was, in any way, prejudiced by the enquiry not being conducted in the manner a judicial or quasi-judicial authority might have conducted,

12. The above case was heard by Dayal and Brij Mohan Lal JJ. and on difference of opinion three questions were referred to a third Judge for opinion; one of the questions was :

"Whether the failure of the Examinations Committee of the Board of High School and Intermediate Education, U. P., to provide an opportunity to the appellants of being heard during its consideration of the alleged use of unfair means by them at the Intermediate Examination of 1954 vitiates their order which is an administrative order?"

Aggarwal, J. expressed his opinion as below:

"The failure of the Examinations Committee of the Board of the High School and Intermediate Education, U. P., to provide the appellants an opportunity of being heard during its consideration of the alleged use of unfair means by them at the Intermediate Examination, 1954, vitiates this order."

This finding shall be treated as the decision in the) above case but it will be proper to read it along with other observations made by Aggarwal, J., while applying it to other cases with different facts. These observations are as below :

"I am therefore of opinion that the Examinations Committee even though acting administratively was bound to give an opportunity to the appellants of being heard either orally or by means of a written explanation during the consideration by the Board of the alleged use of unfair means by them."

"Even so, in my opinion in order to perform its administrative functions properly, it must have before it the view points of the examinees before it passes any order."

13. It will be found that Aggarwal, J. did not lay down that the examinees should be given an opportunity to cross-examine the witnesses and to adduce evidence in defence. They were to be given an opportunity of being heard "either orally or by means of a written explanation." The written explanation could be obtained by an authority other than the punishing authority; and if the explanation of the examinee is before the punishing authority, there would be no violation of the principles of natural justice or disregard of the ordinary rules of fair play. Further, as observed at another place, what is necessary is that the view-point of the examinee should be obtained before final orders are passed. To put it differently, it was not necessary for the academic Council to obtain explanation of the examinee afresh or to hold the inquiry in the manner laid down for, or to be followed in judicial trials or quasi-judicial proceedings.

14. Whether there has been a violation of the principles of natural justice or not, shall, as observed in *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, , depend upon the facts and circumstances of each individual case.

15. Before a reference is made to the other Supreme Court cases which were brought to my notice by the rival parties it would be proper to further comment upon the questions involved in the present case. In my opinion, the opportunity furnished to the petitioner in the circumstances of the case can be regarded to be sufficient. The petitioner did not make any allegation against the impartiality and integrity of both the invigilator and the Superintendent neither at the time he was caught nor in the present proceeding. The petitioner has nowhere alleged that the two officers had any grudge against him.

When the invigilator and the Superintendent had no cause of displeasure to the petitioner, they would not have concocted a case against him to have him rusticated and debarred from the examination. They would also not have thought of exaggerating the allegations. Consequently, it can be presumed that, according to the petitioner also, the allegations made against him both by Sri S. N. Roy Chaudhary and Dr. S. Prasad can be accepted in preference to his, who was it may be mentioned in the category of an accused person. In other words, the petitioner was caught with the paper in question containing answers to some

of the questions set in the paper in which he was being examined and this paper was found below his thigh.

For this irregularity the punishment which was later on awarded to him could be inflicted. Even though the paper was found below his thigh, the petitioner gave a lame explanation by saying that the paper did not belong to him, nor was it in his possession, but had been found lying on the floor. A person who takes such a lame excuse will have no evidence to adduce in defence, and he would not be able to obtain any material to substantiate his plea by cross-examining impartial officials like the invigilator and the Superintendent. Consequently, if the enquiry was not conducted in the manner now suggested by the petitioner, he was not at all prejudiced. Further, the Academic Council of the Banaras Hindu University was acting as an administrative body and not as a judicial or quasi-judicial tribunal, and the rules ordinarily applicable to tribunals cannot apply to such an administrative body.

The petitioner has not brought to my notice any statutory provision or rule under which it was obligatory or necessary for the Academic Council of the Banaras Hindu University to hold a regular enquiry by calling upon the petitioner to submit additional explanation and to participate in the enquiry. In these circumstances, the Academic Council could pass a suitable order when it had before itself not only the view point of the petitioner but also the full facts, which were material for the decision of the case.

The rule with regard to the principles of natural justice is enforced by the courts of law, so that no person may be condemned without being heard and also to safeguard the interest of that person. When, in the present case, the petitioner had an opportunity to submit his explanation and the order was passed keeping this view-point in mind, it cannot be said that there was, in the eye of law, a violation of the principles of natural justice or that the ordinary rules of fair play had not been observed.

16. At this place it will be useful to refer to another Division Bench case of this Court. In *Ram Chandra Roy v. University of Allahabad*, (S) AIR 1956 All 46, it was observed that in a case, where a head of an educational institution takes disciplinary proceedings it is not necessary that he must give an opportunity to the student to cross-examine the witnesses who may be examined by him in order to satisfy himself that an occasion had arisen for taking disciplinary action against him. It was further observed that in matters of discipline, the head of an educational institution does not act as a judicial or quasi-judicial tribunal.

17. Learned counsel for the petitioner relies upon two Supreme Court cases, namely, *Union of India (UOI) Vs. T.R. Varma*, , and *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, . In the first case, rules of natural justice were discussed in detail and in the other, it was indicated what was meant by giving a personal hearing. In (S) *Union of India (UOI) Vs. T.R. Varma*, , it was observed that rules of natural justice require

that a party should have the opportunity of adducing all relevant evidence on which he relies that the evidence of the opponent should be taken in his presence, that he should be given the opportunity of cross-examining the witnesses examined by that party and that no material should be relied on against him without his being given an opportunity of explaining them.

In the other case it was observed that the personal hearing must be given by the authority who was competent to pass the order. The former case relates to a departmental enquiry conducted against a public servant. Rules exist with regard to holding such an enquiry and they provide for holding enquiry in the presence of the official concerned after giving him an opportunity to cross-examine; the witnesses on whose evidence or reports reliance was being placed by the State and also to lead evidence in his defence. The latter case relates to the Motor Vehicles Act and similar enactments. The Regional Transport Authority and similar authorities act as quasi-judicial tribunals, and before they pass an order it is necessary for them not to violate the ordinary rules of natural justice. The present is not one of such cases. I am fortified in making this classification by certain observations made by their Lordships of the Supreme Court in *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, , where it was observed as below:

"But before we do that, it has got to be observed that the question whether the rules of natural justice have been observed in a particular case must itself be judged in the light of the constitution of the statutory body which has to function in accordance with the rules laid down by the legislature and in that sense the rules themselves must vary."

A similar rule was laid down in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, , and it was expressed in the following words:

"In that case, this Court has laid down that the rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the Act under which they function; and the question whether or not any rules of natural justice had been contravened, should be decided not under any pre-conceived notions, but in the light of the statutory rules and provisions. In the instant case, no such rules have been brought to our notice, which could be said to have been contravened by the Appellate Authority. Simply because it viewed a case in a particular light which may not be acceptable to another independent tribunal, is no ground For interference either under Article 226 or Article 227 of the Constitution."

In other words, whether there has been a violation of the principles of natural justice will vary from case to case, depending upon the constitution of the body dealing with the matter and also upon the facts of the case. The Academic Council of the University is an administrative body, which has to pass orders of various kinds to maintain discipline and order within and in connection with the

University. The University has to examine the candidates, and even for holding the examination certain discipline has to be maintained. If such an administrative body is expected to function like a judicial or a quasi-judicial tribunal, it can easily happen that the results of many examinees may not be declared for years together.

This would be an additional ground to presume that the administrative body has not only to function as such, but it must hold a summary enquiry of course, without prejudicing the persons against whom any order is being passed. In majority of the cases it will, therefore, not be necessary for the academic council to afford an additional opportunity to the examinee to submit his explanation or to otherwise take part in the conduct of enquiry. Where it appears that the view-point of the examinee is not or cannot be without substance, it would be necessary for the Academic Council to hold further enquiry into the matter; in other words, it may become necessary for the Academic Council to adopt the ordinary, rules of natural justice, that is, to permit the examinee to cross-examine the officers who had submitted reports against him, and also to adduce evidence in defence.

In others, a further detailed enquiry without active participation of the examinee may be sufficient. The Courts of law cannot in the affairs of an educational institution, lay down any hard and fast rule and each case shall have to be decided on its merits. In the present case, reasonable opportunity had already been offered and in view of the explanation furnished by the petitioner, no further enquiry was necessary. I am, therefore, of the opinion, that there was no violation of the principles of natural justice, nor was there disregard of the rules of fair play when the Academic Council took the decision after taking the reports of the invigilator and the Superintendent and also the explanation of the petitioner.

18. Before parting with the case, it may however be observed that the order in which the form, annexure "1" to the counter affidavit, has been printed can at occasions create a misunderstanding. In the present case both the invigilator and the Superintendent had noted the time below their reports, and no confusion was therefore likely to arise; but if these two officers had not noted the time, it could be argued and, I may say, in some cases, successfully, that the two reports were written subsequent to the furnishing of the explanation by the examinee. The University authorities will be well advised to consider amending the form and for so long as new form is not printed to lay down the rule that invigilator and other persons who have personal knowledge must first of all record their report concisely indicating all the facts which may be used against the examinee and thereafter the explanation of the examinee should be obtained. "

19. High Courts do not, while exercising jurisdiction under Article 226 or 227 of the Constitution, function as a Court of appeal and consequently they cannot look into the propriety of the order passed and the punishment awarded unless of course there had been violation of the principles of natural justice or there

exists an error apparent on the face of the record, or there was an error in the exercise of jurisdiction in the sense that the order passed or the action taken was arbitrary. In the circumstances of the present case, it cannot be said that the Academic Council of the Banaras Hindu University had not acted properly. Consequently the order of the Academic Council, as communicated to the petitioner by the Registrar, cannot be interfered with by this Court.

20. The petition is hereby dismissed with costs. The stay order shall stand vacated.