

(1974) 08 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 147 of 1972

Surjit Singh Jaswal

APPELLANT

Vs

G.C. Kaushal and Others

RESPONDENT

Date of Decision : 23-08-1974

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 392
Himachal Pradesh University Act, 1970 — Section 12, 18, 21, 33, 38
Punjab University Act, 1947 — Section 10(4), 20, 21, 31
Punjab University Regulations — Regulation 11, 14, 21

Citation : (1974) 3 ILR HP 703

Hon'ble Judges : D.B. Lal, J;Chet Ram Thakur, J

Bench : Division Bench

Advocate : O.P. Thakur and Kamlesh Sharma, for the Appellant; B. Sita Ram, General and K.D. Sud, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—Surjit Singh Jaswal has filed this writ petition under Articles 226 and 227 of the Constitution, where in he has called in question a decision dated July 12, 1972, of the Himachal Pradesh University holding him guilty of using unfair means while answering Chemistry B-paper of the Pre-Medical Examination held on May 25, 1972, under Regulation 14(a)(i) and 14 (a)(iii) of the Regulations (Use of Unfair Means) Part-D of the Panjab University Calendar, 1970 Vol. I (as made applicable to the Himachal Pradesh University) and awarding him the punishment of disqualification from appearing in any university examination for four years including that in which he was found guilty. According to Petitioner, he is 21 years in age and was a regular student of Pre-Medical class in the Government College, Bilaspur. He appeared in the Pre-Medical examination held in May, 1972, and his Roll No. was 20. The centre of his examination was the Government College, Bilaspur. He appeared in the Chemistry B-paper from that centre on May 25, 1972.

2. On June 14, 1972, contends the Petitioner, he applied for admission to the

Jiwaji University, Gwalior, in the first year course of Bachelor of Physical Education in Lakshmibai College, Gwalior. After some interview, he was selected for admission and joined the said college on July 17, 1972. Thereafter the Petitioner asked for a migration certificate from the Himachal Pradesh University (Respondent No. 2). He was not granted the migration certificate. But, to his surprise, he received a communication dated June 15, 1972, which according to him he received on June 25, 1972, saying, that there was a complaint against him from the Evaluation Centre that two of the continuation-sheets were found smuggled which he had done during the course of examination. As such he was asked to submit his explanation by June 22, 1972, and was further asked to appear before the Examination Discipline Committee (hereinafter to be referred as E.D.C.) at 10 A.M. on June 26, 1972. One enclosure (Annexure P 2A) was also sent which contained the report of Shri M.B. Gautam, Senior Lecturer in Chemistry who actually examined the answer-book and found the smuggled-sheets. There was also a report appended by the Controller of the Evaluation Centre. Accordingly the Petitioner submitted his explanation on June 22, 1972, and stated that he wanted to see the answer-book and the smuggled-sheets before he could effectively reply the charge. He appeared before the E.D.C. on June 26, 1972, at the appointed time. He was presented before the members of the E.D.C. who were, according to Petitioner "some unknown three persons". He was asked certain questions and was confronted with his answer-book containing the smuggled-sheets. He stated at once that the smuggled-sheets were not in his hand writing and that the two sheets which were actually written by him were missing. According to Petitioner, he was not disclosed the real charges that were framed against him. He was not permitted to adduce his witnesses, nor any witness was examined in his presence. He was not given opportunity to cross-examine Shri M.B. Gautam and the Controller of the Evaluation Centre. In fact, no evidence existed and as such no punishment could be awarded.

3. Subsequently on July 12, 1972, the Petitioner was informed of the decision of the University which was based on the report of the E.D.C. He received the impugned Annexure P. 4 whereby he was held guilty for adopting unfair means under Regulation 14(a)(i) and 14(a)(iii) and was disqualified to appear in any university examination for a period of four years.

4. The Petitioner contends that the said Regulation does not fall within the ambit of the notification dated August 29, 1970 (Annexure P. 1) extending Part D of the Panjab University Calendar containing regulations and rules of unfair means, to the Himachal Pradesh University. That apart, according to Petitioner the notification is ultra vires the Himachal Pradesh University Act with reference to its Sections 38, 40 and 48 as well as statutes 23 and 26. As such the decision could not be made by the University by the help of Part D of the Panjab University Calendar.

5. The Petitioner further contended that the E.D.C. was not validly constituted and had no jurisdiction to award the punishment. Besides that, Shri G.C.

Kaushal, Assistant Registrar had no authority to ask for the explanation of the Petitioner and even to convey the punishment awarded by the E.D.C. He was neither an authority, nor a member of an authority, nor an officer of the University. His entire action was without jurisdiction and he could not act in his personal name while conveying the information to the Petitioner.

6. In fact, subsequently the Petitioner sent several letters to the University wherein he demanded attested copies of documents, but he was not supplied the same. He had even deposited some fee for those attested copies.

7. According to Petitioner, the decision of the University was arbitrary and against the rules of natural justice and was also mala fide. The Petitioner had joined the Jiwaji University and there was even an estoppel against the Himachal Pradesh University from pursuing any disciplinary action against him. No explanation could be given by the Petitioner as he did not get even 15 days prescribed period for sending a reply. There was no evidence as to when the material was smuggled and who actually smuggled it. It could even be that the same was smuggled during the course of transit of answer-book to the Evaluation Centre. In fact, contended the Petitioner, the case does not fall under Regulation 14(a)(i) and 14(a)(iii) under which he was punished. He also casually contended that the verification appended to the affidavits filed by the University was illegal and hence no attention could be paid to them.

8. On these grounds, the Petitioner has sought for quashing the decision of the University (Annexure P. 4) by a writ of certiorari and he has further asked for a writ of quo warranto against Respondent No. 1, namely Shri G.C. Kaushal, Assistant Registrar, to show his authority for passing the impugned order. It is further requested that the notification dated August 29, 1970 (Annexure P. 1) be declared ultra vires the provisions of the Act and the Statutes.

9. In reply the Respondents 1 and 2 who are the Assistant Registrar and the Himachal Pradesh University, contend, that it was the Petitioner and none else who had smuggled the sheets in his answer book. While Shri M.B. Gautam was examining the answer book at the Evaluation Centre, he could discover the smuggled material. There was intrinsic evidence against the Petitioner. In the other questions attempted by the Petitioner he got zero marks, while in the papers smuggled and questions attempted therein he got 18 marks. Besides that, other features also existed which amply proved that the sheets were smuggled by the Petitioner. The colour of the sheets was different and it was beyond comprehension that anybody else would have smuggled the sheets without the connivance of the Petitioner. When the notice to show cause was issued, the Petitioner replied on 21-6-1972 and 22-6-1972 and gave his explanation which was more than sufficient. On 21-6-1972 (Annexure R. 1) he wrote that he had come to know about the withholding of the result and an unfair means case being instituted against him. Accordingly he wanted to know as to when he should appear before the enquiry committee. On 22-6-1972 (Annexure P. 3) he gave his explanation to the show cause notice. Therefore, it

was wrong to state that no opportunity was given to the Petitioner to explain his case. Thereafter the Petitioner appeared before the E.D.G. on June 26, 1972, and was shown the answer book as well as the smuggled sheets which he denied to be in his handwriting. If the Petitioner applied for admission and joined the Jiwaji University, he did so at his own risk. He was liable to explain his case of unfair means instituted against him. No amount of estoppel can be pleaded against the Himachal Pradesh University. As to Shri G.C. Kaushal, Assistant Registrar, it was contended that he performed merely the ministerial act of conveying information to the Petitioner. The deciding authority was the E.D.C. or the Vice-Chancellor. Shri Kaushal was duly authorised by the Executive Council and also by the Registrar to authenticate the correspondence in connection with cases relating to unfair means. Accordingly whatever correspondence ensued and related to the unfair means committed by the Petitioner, it was made within jurisdiction of the University. There was nothing personal for the Assistant Registrar to convey to the Petitioner. Ample opportunity for defence was given to the Petitioner. He could produce his witnesses for which he never stated before the E.D.C. nor in his reply (Annexure P. 3). He wanted to see the smuggled sheets and the same were shown to him on the date he appeared before the E.D.C. and gave his statement which the University filed in original. When no witnesses were produced, there was no occasion for permitting him to cross-examine them. It was not even otherwise required of the University to have produced for cross-examination Shri M.B. Gautam or the Controller of the Evaluation Centre. The real charges were already made known to the Petitioner.

10. As to the notification, it was contended that the same was intra vires and could not be considered to be inconsistent with the provisions of the Act or the statute. Regulation 14 under which the Petitioner was punished was very much within the ambit of this notification. Similarly the E.D.C. was validly constituted and had the jurisdiction to decide the case of the Petitioner. There was ample evidence against the Petitioner and he was rightly punished. There was no mala fide nor was any alleged in the petition. As to 15 days period of time to be granted for reply, the University stated that the Petitioner already sent his reply on June 22, 1972 and it was for him to have waited up to 15 days for which he could make a separate request. If a reply was received within 15 days, the Regulation was complied with and no prejudice was caused to the Petitioner. As to the verification of the affidavit, it was submitted that the same was in order and that nothing could be inferred against the Respondents merely on that account.

11. Along with the return two affidavits were filed, one of Shri Teja Singh Vaidya, retired District Judge and the other of Shri Batuk Singh, retired Member of the U.P.S.C., who were members of the E.D.C. In their affidavits it was alleged that adequate opportunity was given to the Petitioner to explain his conduct and that the decision was taken after consideration of his case on merit.

12. It may be convenient at this stage to take note of certain dates as well as

facts and circumstances, which are very pertinent and which also appear to be beyond controversy. Before the Himachal Pradesh University Act was passed, the rules and regulations made under the Panjab University Act were applicable to the Himachal Pradesh University. The rules and regulations relating to unfair means are contained in Part-D of the Regulations given in the Panjab University Calendar, 1970 (Vol. I). These regulations were made u/s 31 of the Panjab University Act, 1947. The Himachal Pradesh University Act, 1970, came into force on 22-7-1970. The Statutes under the Act came into force on 1-8-1970. The impugned notification was issued on 29-8-1970 u/s 48 of the Himachal Pradesh University Act, 1970. This notification was, however, published in Rajpatra on 27-10-1971. Thereafter the Ordinance was issued by the University u/s 40 of the Act on 30-6-1973. As to this particular case, the show cause notice was issued on 15-6-1972 of which explanation was given on 22-6-1972. Although Annexure P. 3 does not disclose this date, yet from the original record of the University (which both the parties freely referred to) it is evident that the explanation of the Petitioner was received on 22-6-1972. Besides that explanation, he had already written a letter to the University enquiring about the date of his appearance before the E.D.C. In his reply to the University the Petitioner merely demanded that the smuggled material be shown to him. He did not specify that he wanted to examine any witnesses or to cross-examine the examiner or the Controller of the Evaluation Centre. This he did not say even on the date he appeared before the E.D.C. and gave his statement. In that statement he denied that the smuggled material was in his handwriting. Although allegation of mala fide was made in the petition, yet no detail was given. As to Shri G.C. Kaushal, it is conceded that the show cause notice as well as the decision conveyed to the Petitioner showed his signatures on behalf of the University. In the show cause notice, the explanation was required to be sent in the name of Shri G.C. Kaushal. It was conceded that Shri G.C. Kaushal is neither an authority, nor an officer as defined in the Himachal Pradesh University Act, 1970. One has to keep in mind these facts while determining the rights of the Petitioner.

13. A few preliminary remarks about the object and the scheme of the Act may now be made. A little comparative study with the Panjab University Act, 1947, would also be useful. Section 6(4) of the Himachal Pradesh University Act, 1970, deals with the power of the University to hold examinations, grant diplomas and certificates and confer degrees. In Sub-section (9) of this section the power is of the University to regulate and enforce discipline amongst the students. Section 12 deals with the appointment of the Vice-Chancellor and he is the principal executive and academic officer of the University. He is ex-officio Chairman of the Executive Council. A similar provision in the Punjab Act is contained in Section 10(4). Section 18 of the Himachal Act relates to the authorities of the University and Executive Council is one of such authorities. Section 21 of that Act deals with the constitution of the Executive Council and says that the Executive Council is the executive body of the University and its constitution and the terms of office of its members other than ex-officio members has to be prescribed by the

statutes. The relevant statute is 10. In the Panjab Act, the executive government of the University is vested in the Syndicate which is a body in pari materia with the Executive Council of the Himachal Act. For this Section 20 of the Panjab Act may be referred to. Section 33 of the Himachal Act again provides that the eligibility for admission to any examination is to be decided by the University. Sections 38 and 39 of that Act deal with the statutes and how these are to be made. Finally, Section 40 of the Himachal Act pertains to ordinances and need be reproduced:

40. (1) Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely:

(a) the admission of students, the courses of study and the fees therefor, the qualifications pertaining to degrees, diplomas, certificates and other academic distinctions, the conditions for the grant of Fellowships, scholarships, awards and the like;

(b) the conduct of examinations, including the

term of office and appointment of examiners, and the conditions of residence of students and their general discipline;

(c) the management of colleges and institutions maintained by the University;

(d) the giving or religious instruction;

(e) the emoluments and the terms and conditions of service of the teachers of the University;

(f) the supervision and inspection of colleges and other institutions, admitted to the privileges of the University;

(g) any other matter which by this Act or the statutes is to be or may be provided for by the Ordinances.

(2) The first Ordinances shall be made by the State Government and the Ordinances so made may be amended, repealed or added to at any time by the Executive Council in the manner prescribed by the Statutes.

It is therefore, evident that the conduct of examination and the general discipline of students which includes adoption of unfair means and punishment thereof, is the subject for which Ordinance was to be made. Section 48 of the Himachal Act was repeatedly referred to by the parties during the course of arguments and need be extracted as below:

48. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the "Rajpatra, Himachal Pradesh" make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of two years from the

commencement of this Act.

14. When the question regarding unfair means was a subject-matter of Ordinance and these Ordinances were issued not before June 30, 1973, the question naturally arose as to how unfair means cases were to be dealt with. To remove the difficulty the impugned notification u/s 48 was issued. The Petitioner also referred to statutes 23 and 26 of which statute 23 appears to be relevant which is reproduced:

23. Maintenance of discipline among students of the University.--(1) All powers relating to discipline and disciplinary action in relating to students shall vest in the Vice-Chancellor.

(2) The Vice-Chancellor may delegate all or such of his powers as he deems proper to such other person as he may specify in this behalf.

(3) Without prejudice to the generality of his powers relating to the maintenance of discipline and taking such action in the interest of maintaining discipline, as may seem to him appropriate, the Vice-Chancellor may in the exercise of his power aforesaid, order or direct that any student or students be expelled from any college or institution maintained by the University or department or be for a stated period, rusticated or be not, for a stated period, admitted to a course or courses of study in any such college or institution or department or be fined in a sum of rupees that may be specified, or be debarred from taking an examination or examinations for one or more years or that the results of student or students concerned in the examination or examinations in which he has or they have appeared be cancelled.

(4) The Principals or, as the case may be, the heads of the colleges, institutions or departments shall have the authority to exercise all such disciplinary powers over the students in their respective colleges, institutions, and departments as may be necessary for the proper conduct of such colleges, institutions or departments.

(5) Without prejudice to the powers of the Vice-Chancellor, detailed rules of discipline and proper conduct shall be framed. The Principles, or as the case may be, the heads of colleges, institutions and departments may frame such supplementary rules as they deem necessary for the aforesaid purposes. Every students shall provide himself with a copy of these rules.

15. The decision of the E.D.C. which was a disciplinary body is sought to be quashed by the Petitioner, and the main contention is that adequate hearing was not given to him. In other words, according to Petitioner the procedure adopted by the University had fallen short of the principles of natural justice. There could, however, be no dispute that the E.D.C. or any other disciplinary body of the University deciding cases of unfair means, would be a quasi-judicial body and as such it had to act within the principles of natural justice. In Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and

Others, it is laid down by the Supreme Court that any such statutory authority will have to act quasi-judicially. Its final determination will nonetheless be a quasi-judicial act and the requirement of rules and regulations will have to be satisfied. What are then the principles of natural justice which are required to be observed by such a quasi-judicial authority which has to deal with the disciplinary cases against students? The main principles of natural justice to be observed by a domestic tribunal were laid down by the Privy Council as far back as in *Lennox Arthur Patrick O'Reilly and Ors. v. Cyril Cuthbert Gittens* AIR 1949 P C 313, which were well followed in subsequent decisions. I cannot but quote those principles:

A domestic tribunal is in general a tribunal composed of laymen. It has no power to administer an oath and, a circumstance which is perhaps of greater importance, no party has the power to compel the attendance of witnesses. It is not bound by the rules of evidence; it is indeed probably ignorant of them. It may act, and it sometimes must act, on mere hear say, and in many cases the members present or some of them (like an English jury in ancient days) are themselves both the witnesses and the judges. Before such a tribunal counsel have no right of audience and there are no effective means for testing by cross-examination the truth of the statements that may be made. The members of the tribunal may have been discussing the matter for weeks with persons not present at the hearing, and there is no one even to warn them of the danger of acting on pre-conceived views. It is apparent and it is well settled by authority that the decision of such a tribunal cannot be attacked on the ground that it is against the weight of evidence, since evidence in the proper sense there is none, and since the decisions of the tribunal are not open to any sort of appeal unless the rules provide for one.

The principles applicable to the proceedings before such tribunals are that there must be due enquiry. The accused person must have notice of what he is accused. He must have an opportunity of being heard, and the decision must be honestly arrived at if he has had a full opportunity of being heard. Provided that the tribunal does not exceed its jurisdiction and acts honestly and in good faith, the Court cannot intervene, even if it thinks that the penalty is severe or that a very strict standard has been applied.

Their Lordships naturally referred to the bona fides of the members of such tribunals, their limits, attitude and assistance which they derived mainly from their own source. The decision is not to be besmeared by technicalities of law. So long a right of hearing was given and the party concerned was informed of the material that existed against it and full and adequate opportunity of defence was given, no interference is to be made in the decision arrived at. Cases of mala fide conduct, of course, stand on a different footing. In the instant case three independent and respectable persons were the members of the disciplinary committee. The Petitioner was shown the documents which he wanted to see. He was given adequate opportunity and since he preferred to give his own

statement, the same was recorded. There was no mala fide and as such no exception can be taken to the decision. In *Ramesh Kapur Vs. Punjab University and Another*, a Full Bench of that High Court well laid down the principles of natural justice to be observed during the course of enquiry for malpractice committed by an examinee in an educational institution. It will, of course, depend on the facts and circumstances of each case whether the rule of natural justice has been complied with by the University authorities by affording an adequate opportunity to a candidate to present his case against the charge or allegation of malpractice at the examination made against him. These principles are, that an examinee must be adequately informed of the case he has to meet and given a full opportunity of meeting it. As to what the extent and content of that information should be or ought to be would depend on the facts of each case. Unless there is justification to do so, Courts should be slow to interfere with the decisions of domestic tribunals appointed by educational bodies like Universities. In two subsequent cases of the Supreme Court the very same principles were reiterated. These are: *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, and *Suresh Koshy George Vs. University of Kerala and Others*, The following observation in the case *Board of High School and Intermediate Education, U.P., Allahabad and Anr. v. Bagleshwar Prasad and Anr.* (Supra) is pertinent for our case:

In dealing with writ petitions against the orders of the Universities or Education Boards, canceling the examination results of candidates who were declared to have been passed, it is necessary to bear in mind that educational institutions like the Universities or the Boards, set up Enquiry Committee to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which educational institutions have to face from time to time is a serious problem and unless there is justification to do so, Courts should be slow to interfere with the decisions of domestic tribunals appointed by educational bodies like the Universities. 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. Enquires held by domestic tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such enquiries, the tribunals must scrupulously follow rules of natural justice, but it would not be reasonable

to import into these enquiries all considerations which govern criminal trials in ordinary Courts of law.

It is, therefore, evident that unless the impugned order is not supported by any evidence at all, it has not to be quashed. In order to judge the merit of the allegation, the probabilities and circumstantial evidence must be considered. The test would not be that of a criminal trial in an ordinary Court of law. The bona fide of a domestic tribunal must be sustained, more so when no mala fide is pleaded or proved. In *Suresh Koshy George (Supra)* the Supreme Court again emphasised that the rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of that case. The requirements of natural justice are, first, that the person accused should know the nature of the accusation made; secondly that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. Nothing beyond that appears to be necessary.

16. We have then to judge the merit of this case in the light of observations made above. As to the scope of a writ petition under Article 226, in such cases a reference may be made to *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, Such writs are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. Thus interference in the present writ petition will only be made if a manifest injustice is proved or an error of jurisdiction is established.

17. In *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, an error apparent on face of the record was considered sufficient for interference. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. In *Parry and Co. Ltd. v. P.C. Pal* Judge of the *Parry and Co. Ltd. Vs. P.C. Pal and Others*, a similar view was taken. A mere wrong decision cannot be corrected by a writ of certiorari as that would be using it as the cloak of an appeal in disguise but a manifest error apparent on the face of the proceedings based on a clear ignorance or disregard of the provisions of law or absence of or excess of jurisdiction, when shown, can be so corrected. As to sufficiency or otherwise of evidence adduced, there can be no enquiry. Therefore, if there was no evidence at all, interference would be justified. For this, assistance may be sought from *Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others*, Their Lordships held that the application of principles of natural justice does not imply that what is not evidence can be acted upon.

18. It is significant to note that the Petitioner has failed to point out any rule or regulation which may have compelled the E.D.C. either to have summoned [witnesses or to have permitted cross-examination of such witnesses, or even to have heard the Petitioner in person. It is, therefore, evident that no violation of rule or regulation was pointed out. If witnesses were not produced and only statements of supervisory staff or examiner or Controller of the Centre were perused and the Petitioner was told as to what material evidence existed against him and was given adequate opportunity to meet that material, I do not think any further step was required to be observed by the disciplinary committee.

19. As to the witnesses and their cross-examination, there is a string of authorities to indicate that in every case of enquiry by a domestic tribunal, witnesses need not be examined what to say of cross-examined. It was not even required of the Committee to have afforded a second opportunity to the Petitioner to give his explanation. It is obviously true that the E.D.C. was not competent to enforce attendance of witnesses. In the instant case, the Petitioner was shown the smuggled material. He explained to that material and his statement was recorded. He appeared before the E.D.C. and was free to take any defence he liked. Neither the Petitioner asked for any witness nor any witness was examined by the committee. In such a situation, no principle of natural justice was violated. There is not even a suggestion, much less proof, that any member of the E.D.C. was hostile to the Petitioner. Two of such members have given their affidavits and they must be taken to be speaking the truth.

20. The situation in which the Petitioner was placed and the manner in which the enquiry was conducted and decision arrived at against him, to my mind, do not afford him any legal right for a writ of the description claimed by him. The circumstances are so convincingly against him that nothing can be inferred in his favour, which is also evinced by several judicial pronouncements which I intend reciting at this stage.

21. In *Jagdish Chandar Vs. The University of Punjab*, a Division Bench of that court was considering the right of the examinee to appear in person before an enquiry committee. It was found that in the regulations made no such right was conferred and on that basis it was held that if no opportunity of personal appearance was given to the examinee, the result of enquiry cannot be set at naught. Similarly, in the instant case the regulations under Part-D (ii)(b) of the Panjab University Calendar, 1970 do not provide for personal hearing to be given to the candidate. His explanation was to be obtained and that too on the date the unfair means was detected. In the present case the show cause notice was given to the Petitioner and his explanation was demanded, which he did send in writing on June 22, 1972. In *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, it was held that it is for the parties to produce witnesses before a domestic tribunal as the officers holding the enquiry can take no valid or effective steps to compel the attendance of witnesses. In the instant case, an emphasis was made that right of cross-examination in every case is a principle of natural justice and must be observed.

It is not so. In the State of Jammu and Kashmir and Ors. v. Bakshi Gulam Mohammad and Anr. AIR 1967 Supreme Court 122, it was held that rules of natural justice only require that a party against whom an allegation is made should be given a hearing. The right of hearing does not include a right to cross-examine. The right to cross-examine will depend upon the circumstances of each case and also on the statutes under which allegations are being enquired into. No such right seems to have been conferred upon the Petitioner in view of the regulations made applicable to him. In Rabindra Kumar Sahu Vs. Utkal University, , the case State of Jammu and Kashmir and Ors. v. Bakshi Gulam Mohammad and Anr. (Supra) was followed and the statement recorded at the time of detection of unfair means was considered sufficient and the Petitioner was denied the right to summon witnesses for cross-examination. A Division Bench of this Court held in Mir Chand Vs. H.P. University, that it would not be open to a Petitioner to complain of the omission to produce a witness if he has not applied for the production of that witness. In the present case also, the Petitioner never applied that witnesses should be examined. That plea he only kept for the writ petition. Yet another case of the Supreme Court may be referred to. In Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, in a particular situation witnesses were not summoned for cross-examination and it was held that no rule of natural justice was violated. Similarly in the present case it is easy to hold that sufficient circumstances were made out otherwise, against the Petitioner, and neither he had a right to summon any witnesses to cross-examine them nor the same could be resorted to in the interest of justice. The last case which need be referred to is Sudhir Kumar Suri Vs. Principal, Mahakoshal Arts Mahavidyalaya, Jabalpur, In that case again it was held that in a domestic enquiry of the present kind the right to cross-examine is not a necessary attribute of natural justice.

22. The learned Counsel for the Petitioner relied on Shri yes Pal v. The Panjab University 1965 Current Law Journal (pb.) 182, which is a single Judge decision of the Punjab High Court. In that case the Petitioner was not afforded any opportunity whatsoever of being heard. Nor the case pitted against him was properly explained to him so that his explanation could be obtained. It was found that the principles of natural justice were completely violated and hence the decision of the enquiry committee was set aside. The situation in the present case is entirely different. The learned Counsel further relied on Kripal Singh v. The Vice-Chancellor, Panjab University, Chandigarh 1967 CLJ 670. That is again a decision of a learned single Judge of Punjab and Haryana High Court. The circumstances pointed out were entirely different in that case. The supervisory staff did not report the case of unfair means promptly as was required under the regulation. The opinion of the handwriting expert was not considered beyond reproach and in those peculiar circumstances it was held that the supervisory staff should have been examined in the presence of the Petitioner and he should have been afforded an opportunity to cross-examine them. The ratio of that case is not at all applicable to the case before us.

23. It is, therefore, very proper to hold that adequate opportunity was afforded to the Petitioner. He was very much aware of the charges made against him. The original reports of the examiner as well as the controller, were shown to him on the date he appeared before the committee. It was neither a statutory requirement nor did the Petitioner ask for it and hence no witnesses were produced nor cross-examined. It is entirely wrong to submit that no evidence existed against the Petitioner. When he was shown the smuggled sheets he gave a statement before the committee that the writing was not his. But who else would have smuggled the sheets in favour of the Petitioner? The argument that it was incumbent upon the University to disclose the stage when smuggling took place and the author of such smuggling, is devoid of any force. In that connection it was submitted that some account is maintained when extra sheets are issued. The Petitioner wanted that such account should have been produced for perusal of the Court. We do not consider that any such account was at all needed when for the reasons stated, which we consider very proper, the sheets were found to be smuggled and the only inference to which one could arrive was that the Petitioner, either himself or through some agency, got them smuggled.

24. As to the admission of the Petitioner in the Jiwaji University, the risk was his and he actually suppressed the facts and sought for the admission. No principle of estoppel was involved and no benefit can be afforded to the Petitioner. Even an elementary requirement for application of the principle of estoppel is not borne out from the record.

25. It is contended by the Petitioner that 15-day period was required to lapse under Regulation 11(d). But the said regulation never indicates that in every situation 15-day period must elapse, but says that the University has to take action after the expiry of 15 days if the candidate fails to answer the show cause notice. In the present case, the Petitioner did answer the show cause notice and hence the University was not required to wait for 15 days.

26. It was argued that the Petitioner did not reply at all, nor was he prepared to face the E.D.C. on that day. In our opinion, the explanation submitted by the Petitioner (Annexure P. 3) was more than sufficient. He was fully prepared before the E.D.C. and did give a statement after examining the smuggled material. It was then feebly contended that the case was not covered under Regulation 14, which too appears to be a faulty argument. The smuggling of continuation sheets was proved and there was sufficient evidence in the estimate of the Committee. As such Regulation 14 did apply and the punishment awarded cannot be considered excessive. As to the mala fide, it is abundantly clear that nothing was stated against any member of the E.D.C. and a general statement in that regard will be no avail. In that connection, the learned Counsel referred to *Suresh Kumar v. The Panjab University* 1965 PLR 693. It was stated that the names of the members of the E.D.C. should have been disclosed to the Petitioner and only thereafter allegations of mala fide could be made against them. At any rate, on the date of the filing of the writ petition, the Petitioner knew of such names and

he could very well point out as to what bias any of these members possessed against him. He has not disclosed any bias or mala fide in his petition and as such this plea also fails.

27. We shall then advert to some other pleas which are by and large legal and bear a great relevancy on this enquiry. The foremost is concerning the notification dated August 29, 1970. It was pointed out that u/s 48 (supra) unless a difficulty arose in giving effect to the provisions of the Act, the State Government could not issue the impugned notification. According to Petitioner no such difficulty arose which fact is depicted, according to him, by this that the notification was issued on August 29, 1970, while it was published in the Rajpatra, Himachal Pradesh, on October 27, 1971. In our opinion, merely by the period which intervened between the date of the notification and its publication in the Rajpatra, it may not be possible to infer that no difficulty was experienced by the State Government. The ordinances to be made u/s 40 were alone to provide for the conduct of examinations [see: Section 40(1)(b)--supra]. Therefore, the regulations relating to unfair means during examinations were to be provided for, and that was the difficulty faced by the Government. In *Anand Bihari Mishra v. Ram Sahay* (A.I.R. 1952 MP 31) a Division Bench was considering removal of difficulty clause in Article 392 and held that the difficulty which may require removal will depend upon the subjective test and not the objective test. That test is to be applied by the authority. If the State Government inferred that the difficulty was there, and as evident reasonable grounds existed for such inference, where is the justification for this Court to substitute its opinion in place of the subjective opinion expressed by the Government? That a part in *Shankari Prasad Singh Devo and Ors. v. The Union of India and Ors.* AIR 1951 S C 458, their Lordships pointed out with reference to Article 392 that the President was not required to wait upto any stage before he could take action for removal of such difficulty. It was again the subjective decision of the President. Similarly in the present case, the subjective decision of the Government was made and the Petitioner will have hardly a right to interfere with that subjective decision. In this connection the Petitioner also relied on Statute 23 which, according to him provided for the unfair means cases. A perusal of Statute 23 (supra) indicates just the otherwise. That statute really dealt with the maintenance of discipline amongst the students of the University, and does not necessarily refer to the conduct of examinations, for which a special provision was to be made u/s 40 by ordinances. Under Statute 23, provisions are made for maintaining general discipline. The Principals and the heads of the colleges affiliated to the University are also associated for this purpose. Similarly the powers of the Vice-Chancellor are also referred to. The special provision regarding unfair means during examination was to be made by ordinances and the language of Section 40(1)(b) was repeated in the impugned notification which is an indication of this fact. Therefore, in our opinion, Statute 23 which is in a general term and more wider in application, had no bearing and unless the ordinances were made the difficulty was nonetheless there to provide for conduct of examination including a

provision relating to unfair means cases. Faced with that difficulty the impugned notification was issued by the Government.

28. It was then pointed out by the learned Counsel that there was inconsistency between the notification and the provisions of the Act. The very language of Section 48 inhibits any such discrepancy, and the learned Counsel argues that the notification is hit because of such inconsistency. In that connection he refers to Sections 38 and 40 of the Act as well as Statutes 23 and 26. Section 38 deals with Statutes, while Section 40 deals with Ordinances. According to the learned Counsel, the notification is ultra vires these sections of the Act. In other words, he means to say that the notification is inconsistent with the statute or with the ordinances to be made and further argues that Statute 23 covers up the cases of unfair means and so there is inconsistency between that statute and regulations brought within the fold of the notification u/s 48. The foremost inconsistency, he pointed out, is relating to the appointment of the committee (E.D.C.). According to the learned Counsel, the committee should have been appointed by the Syndicate which is a body not recognised under the Himachal Pradesh University Act. In the instant case, the E.D.C. was appointed by the Executive Council and that was the inconsistency between the regulation and the provision of the Act, Under Regulation 21, the Syndicate has to appoint annually "standing committee" to deal with cases of alleged misconduct and use of unfair means in connection with examinations. The standing committee is named in the present case as "Examination Discipline Committee" (E.D.C.). The Syndicate is in fact the Executive Council as the constitution and powers of the Executive Council are in pari materia similar to those of the Syndicate of the Panjab University. Therefore, if the Executive Council appointed the Examination Discipline Committee, it was as good an appointment by Syndicate considered in Regulation 21. For this, a reference can be made to Sections 18 and 21 of the Himachal Act as compared to Section 20 of the Panjab Act. The constitution of the Executive Council is almost the same as of the Syndicate. The executive government of the University vests in the Syndicate, similarly as it vests in the Executive Council. The constitution of the Syndicate as provided in Section 20 of the Panjab Act is similar to the constitution of the Executive Council as provided in the Statute 10 made under the Himachal Act. Therefore, no exception can be taken that instead of the standing committee as provided in Regulation 21, Examination Discipline Committee is provided in the Himachal Act or in place of Syndicate under that Regulation, Executive Council is considered for appointment of such committee. Therefore, the E.D.C. appointed by the Executive Council was in just and proper compliance of Regulation 21. No inconsistency in that appointment can be pointed out with reference to the provisions of the Himachal Pradesh University Act.

29. It cannot be stated that the purpose would have been served by Statute 23 and that an ordinance was not needed. We have already pointed out that Statute 23 was meant for a different purpose and the special provision for unfair means cases could only be made under the Ordinance. The University was made to run

under the Himachal Pradesh University Act and the examinations were to be conducted. The authorities could not wait as cases of unfair means were likely to arise no sooner the examinations were conducted. To remove that difficulty the notification was issued. It was not required to have stated in the notification that the Executive Council would appoint the committee and not the Syndicate.

30. It was then contended that the Regulation relating to unfair means was not covered under the notification. We do not agree to this. As pointed out above, Section 40(1)(b) was repeated in the notification. The inference is that everything regarding the conduct of examination and general discipline thereto was included in the notification. Unfair means cases were included in the conduct of examination and general discipline relating thereto. The learned Counsel laid emphasis on Part-D of the Regulations, and submitted that the heading "Conduct of Examinations" is treated separate from the heading "Use of Unfair Means" in that Part. From this an inference should be deduced that "Use of Unfair Means" was different from "Conduct of Examinations" and as such excluded from the notification. As we have pointed out, Clause (b) of the notification (Annexure P. 1) was taken from Section 40(1) (b) of the Act which necessarily provided for the conduct of examinations including unfair means cases. Therefore, whatever assistance can be taken to interpret the notification it must be derived from Section 40(1)(b) and not from Part-D of the Regulations. In that connection, yet a further argument of the learned Counsel is that the immediate requirement was of conduct of examination and the unfair means cases were to arise at a subsequent stage and hence a provision was not made for unfair means cases in the notification. In our opinion, this would again be a faulty reasoning. When examinations were being conducted, simultaneous to that unfair means cases were likely to arise, and there could only be one cumulative notification to remove both the difficulties. Apart from that, in the very scheme of Part-D both "Conduct of Examinations" and "Use of Unfair Means" have been clubbed in a single heading (ii) with sub-heading (a) for "Conduct of Examinations" and sub-heading (b) for "Use of Unfair Means". The indication is that both "Conduct of Examinations" and "Use of Unfair Means" pertain to one and the same process and could not be separated from each other. It would, therefore, be legal to hold that the said clause of the notification very much applied to unfair means cases. The result is that the entire Regulations dealing with the Chapter on "Use of Unfair Means" became applicable to the University examinations. In *Sevantilal Maneklal Sheth Vs. Commissioner of Income Tax (Central), Bombay*, it was observed that a sound rule of interpretation is that a statute should be so construed as to prevent the mischief and to advance the remedy according to the true intentions of the makers of the statute. The decision was followed in *Smt. Gulab Sundari Bapna v. State of Rajasthan and Ors.* AIR 1971 Raj 1, (Full Bench). Therefore, the notification u/s 48 should be given that interpretation with prevented the mischief and advanced the remedy, namely detection of unfair means cases and provision for dealing with such cases in the interest of the University discipline.

31. We are, therefore, of the opinion that the impugned notification (Annexure P. 1) is not only intra vires the provisions of the Act but the Regulations relating to use of unfair means were very well cared for in that notification. The Petitioner was rightly dealt with under Regulation 14 and was properly punished.

32. It was then argued that the Examination Discipline Committee was not properly appointed and hence had no jurisdiction to entertain the case of the Petitioner. The University produced some record before us wherein we could see the steps taken for the appointment of the Committee. On June 14, 1971 (Annexure R. 4), Shri G.C. Kaushal, Assistant Registrar, noted that the consent of the members of the E.D.C. was received and so the notification could be issued. On June 16, 1971, the same Assistant Registrar pointed out that he should be authorised to deal with the cases regarding unfair means. Shri R.M. Sharma the then Registrar approved the suggestion. On June 17, 1971, the Assistant Registrar issued notice for convening the first meeting of the E.D.C. which was to take place on June 19, 1971. The endorsement is again signed by Shri R.M. Sharma the Registrar. On July 21, 1971, the meeting of the Executive Council took place and the constitution of the committee was noted. The members were Sarvashri Batuk Singh, Shri B.K. Sharma and Shri K.L. Sethi. On December 6, 1971, again the meeting of the Executive Council took place and the nominations made by the Vice-Chancellor of the members, Dr. K.C. Khanna and Shri Tej Singh Vaidya, retired District and Sessions Judge to the E.D.C. were "approved" by the Council. On January 20, 1972, again the Executive Council "approved" of the nomination of Shri Abdul Majid to be a member of that committee. On July 10, 1972, (Annexure R. 6) the Assistant Registrar noted that 97 cases were decided by the E.D.C. and the approval of the Vice-Chancellor was required to be obtained for conveying the decisions by notification. The Vice-Chancellor approved the suggestion. On September 7, 1972, the recommendation of the E.D.C. was "accepted" to the effect that the Assistant Registrar Shri G.C. Kaushal "be authorized to authenticate the correspondence of the University with regard to unfair means cases" (Annexure R. 5). All these nothings decidedly establish that the nominations of the members were sent to the Executive Council and the final approval was obtained from them. That could not be but the appointment of the committee by the Executive Council. We have already held that the appointment was as good as by the Syndicate as provided in Regulation 21.

33. The learned Counsel submitted that the E.D.C. was not appointed annually and that is a defect to be noticed. The unfair means cases with which we are concerned related to the year 1972 and as apparent from the above noted documents, the committee functioning during the period dealt with these cases. It is abundantly clear that no mala fide is pleaded against any member of the E.D.C. and hence if any technical flaw as to his appointment for any particular year is pointed out, the Court will not take the same into consideration, so long as it is held that while dealing with these cases the members acted in an honest and bona fide manner. At the same time it is undisputed that the members of the E.D.C. were fully eligible to hold the post assigned to them. They were

respectable persons with sufficient experience and knowledge so that they could efficiently deal with these cases. The court will not interfere merely on technicalities for granting a writ which is otherwise not amenable for more important reasons.

34. In respect of the Examination Discipline Committee, it was contended by the Respondents that it was not made a party to the petition and hence nothing adverse can be concluded against it. To this the answer of the Petitioner, which is very well sustainable in our opinion, is that the University has been made a party and the E.D.C. being a body appointed by the University was not to be made an independent party in the petition. For this assistance was sought from two cases of the Calcutta High Court: B.C. Das Gupta and Another Vs. Bijoyranjan Rakshit and Others, and Khagendra Nath Sen Vs. University of Calcutta and Others, In the first case it was held that where a larger body is made a party, its component part need not be made a party. In the second case the University was made a party but the Syndicate was not made a party, and it was held that it was not necessary that either the Syndicate or the members of the Syndicate should have been made the party when the University was already a party in the petition. The ratio of these two cases decidedly helps the Petitioner.

35. Now we pass on the the plea relating to Shri G.C. Kaushal, Assistant Registrar. It is stated that he is neither an authority nor an officer of the University and as such the show cause notice that he issued and the decision that he conveyed were without jurisdiction. As we have pointed out above, Shri G.C. Kaushal, Assistant Registrar, was merely authorised to "authenticate the correspondence" of the University with regard to unfair means cases. As such he was acting as a servant of the University to convey the orders and decisions of the appropriate authorities. Accordingly he sent the show cause notice (Annexure P. 2), and if he wrote down that the explanation was to be sent in the name of the "undersigned" he did not commit any mistake. The explanation was solicited in the personal name of the Assistant Registrar to ensure its receipt and to keep up the confidential nature of the document. That is done almost every day in any institution. It cannot be argued from this that Shri G.C. Kaushal was acting independently of the University or its committee. Similarly whatever decision was given by the E.D.C. and approved by the Vice-Chancellor was conveyed by the Assistant Registrar to the candidate. No exception can be taken if the Assistant Registrar signed the charge-sheet or issued the show cause notice or conveyed the decision of the committee. Therefore, in our opinion, the plea regarding Shri G.C. Kaushal is a apparently devoid of any merit.

36. A lukewarm argument was advanced that the affidavits submitted by the Respondents did not bear proper verifications and hence should be discarded. These affidavits were duly verified on oath in the presence of the Oath Commissioner and so there was a substantial compliance. Apart from that, the contentions made by the Petitioner have been given a fair dealing by us. The factual position as contained in the petition has been taken up at its face value

and there is no serious dispute as to the facts alleged or denied between the parties. Upon the very allegations made in the petition, no writ of any description can be issued. In that contingency, in our opinion, no regard can be made to any infirmity which may be found in the verifications over the affidavits.

37. In view of what we have stated above, in our opinion, no ground is made out in favour of the Petitioner. He has been rightly dealt with by the Examination Discipline Committee and the punishment awarded cannot be considered excessive. It was rightly held that he smuggled two of the continuation-sheets and employed unfair means to be dealt with under Regulation 14 of the Panjab University Calendar (1970).

38. In the result, the petition is dismissed. However, we make no order as to costs.

Chet Ram Thakur, J.

39. I agree.