

(1992) 09 AHC CK 0103

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9608 of 1991

Sushil Kumar Singh

APPELLANT

Vs

Registrar-cum-Examination Superintendent, Allahabad
University and Another

RESPONDENT

Date of Decision : 29-09-1992

Acts Referred:

Citation : (1992) 4 AWC 80 Supp

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : Aditya Narain, for the Appellant; S.N. Upadhyaya, for the Respondent

Final Decision : Allowed

Judgement

R.A. Sharma, J.—Being aggrieved by an order dated 20th March, 1991 cancelling his B.A. II year examination of 1990 and further debarring him from appearing in the examination in the subsequent year 1991, Petitioner has filed this writ petition.

2. Sri S.N. Upadhyaya, learned Counsel for the University has produced the original records before this Court. From perusal of the record and from pleadings of the parties, it appears that from the Examination-centre, where the Petitioner was appearing in B.A. Part II examination, a printed material was recovered from a place near his seat. On that basis the result of B.A. Part II of the Petitioner was cancelled and he was further debarred from appearing in the examination of subsequent year.

3. Submission of the learned Counsel for the University is that the printed material which was recovered by the Flying Squad was relevant to one of the questions of the question paper which was being answered by the Petitioner on that day. It is further pointed out that few lines of first para of one of the answers given by the Petitioner tally with the offending material and on this basis it has been argued that the Petitioner is guilty of copying from that material. In

this connection the learned Counsel has placed before me the first few lines of that answer and has compared it with the offending printed material. The answer of the Petitioner consists of more than one paragraph, first few lines of which although do not tally exactly but do have some resemblance, but on that account inference of copying cannot be drawn against the Petitioner.

4. The printed material was not recovered from the person of the Petitioner, but was found from nearby place of his seat. Although it does create a suspicion against the Petitioner, but it was not necessarily to lead to the conclusion that the Petitioner was having that material with him. In a Examination centre large number of students are allotted seats and unless it is found that particular student was having that offending material or was using it in the examination, no punishment can be awarded.

5. During the pendency of the writ petition this Court vide interim order dated 13th September, 1991 directed the Respondent to permit the Petitioner to appear in B.A. III year examination provisionally. In pursuance of the said interim order Petitioner has appeared in B A III year examination, but his result has not been declared so far. If the writ petition is dismissed the Petitioner will have to appear in B.A. Part II examination again. As the Petitioner has appeared in B.A. Part III examination in pursuance of interim order of this Court it would not be proper to order him to appear in B.A. Part II examination again in as much as he has put in Labour, money and time for appearing in the examination of B.A. III year. Under the circumstances of the case it would be appropriate to direct the University to declare the result of the Petitioner of B.A. Part II.

6. Relying on the decisions of the Supreme Court in the case of State of Maharashtra v. Vikas Sahebrao Raundale & Co. J.T. 1990 (5) SC 175 and Controller of Examinations and Others Vs. G.S. Sunder and Another, , the learned Counsel for the Respondents have argued that this Court should not direct the University to declare the result of II year of the Petitioner- Help from these decisions can be taken only if the Petitioner is held guilty of mal practice in the examination. But in the instant case use of mal practice by the Petitioner in the examination-hall cannot be said to have been proved. Petitioner cannot be punished on mere suspicion.

7. For the reasons given above this writ petition is allowed, with a direction to the Respondents to declare the result of the Petitioner of B.A. Part II within three weeks from the date of presentation of certified copy of this order. In case the Petitioner is declared to have passed B.A. Part II examination his result of B.A. III year will also be declared within two weeks from declaration of the result of B.A. Part II. If, however, it is found that the Petitioner has failed in B.A. II year the result of B.A. III year will not be declared.