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(1962) 08 SC CK 0002

In the Supreme Court Of India

Case No : ?Appeal (civil) 328 of 1962

The Board of High School and Intermediate Education U.P. — APPELLANT

Vs

Bagleshwar Prasad and Others — RESPONDENT

Date of Decision : 27-08-1962

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 1966 SC 875 : (1963) 2 ALT 119 : (1963) 7 FLR 415 : (1963) 3 SCR 767

Hon'ble Judges : Raghubar Dayal, J;P. B. Gajendragadkar, J;K. C. Das Gupta, J

Bench : Full Bench

Final Decision : dismissed

Judgement

Gajendragadkar, J.—This appeal by special leave arises out of a Writ Petition filed by the respondent Bagleshwar Prasad against the Board of High School and Intermediate Education, U.P., Allahabad, and its Secretary, appellants 1 & 2, and another. By his petition, the respondent challenged the validity of the order passed by appellant No. 1 on December 5, 1960, cancelling the respondent's result at the High School Examination held in 1960. It appears that the respondent appeared for the said examination from the Nehru Intermediate College center, Bindki. He was declared to have passed the said examination in the II Division with distinction in Art. Thereafter, he joined Intermediate first year class in the Kulbaskar Ashram Agriculture College at Allahabad. On the 3rd September, 1960, he received a letter from the Principal, Adarsh Higher Secondary School, Kora Jahanabad, from where he had appeared for the High School examination, calling upon him to appear before a Sub-Committee to answer the charge of having used unfair means in English, Mathematics and Hindi papers. Accordingly, he appeared before the said Sub-Committee. A charge was given to him and his explanation was obtained on the said charge. This charge was based on the fact that in Hindi 3rd paper set at the said examination, the respondent had given wrong answers to Question No. 4 in precisely the same form in which the said answers had been given by a candidate whose Roll No.

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was 94733. The respondent's Roll No. was 94734. The respondent was shown the identical wrong answers to the said Question which were found in the two papers, and he was asked to explain about the said identity of the wrong answers. He admitted that the wrong answers appeared to be identical, but he denied that he had used any unfair means. The Sub-Committee however, was not satisfied with the explanation and reported that both the respondent and the candidate whose Roll No. was 94733 had used unfair means. As a result of the report made by the Sub-Committee, the first appellant passed an order cancelling the results of both the candidates. Both the said candidates disputed the validity of the said order in the Allahabad High Court. The petition filed by the candidate whose Roll No. was 94733 was dismissed, but that of the respondent was allowed, and the impugned order passed by appellant No. 1 cancelling the result of the respondent in the High School examination for 1960, has been set aside. It is against this order that the appellants have come to this Court by special leave.

2. From the petition filed by the respondent in the High Court (W.P. No. 3469 of 1960) it appears that he challenged the validity of the impugned order on several grounds. The principal contentions raised by the petitioner against the competence and the authority of appellant No. 1 and against the regularity and fairness of the enquiry held, arose for decision before the High Court in the companion W.P. No. 3196 of 1960 also. The High Court rejected the said contentions of law in that W.P. and for the reasons recorded in the judgment in that petition, the said contentions were rejected even in the present petition. Thus, the challenge to the validity of the order made on points of law was not sustained.

3. The High Court then proceeded to examine the narrow ground of attack against the validity of the order which was made on the basis that the impugned order was not supported by any evidence at all. It appears from the judgment of the High Court that the High court was inclined to accept this argument and it has set aside the order on the ground that it is not supported by any evidence. The correctness of this finding is seriously disputed before us by the learned Advocate-General who appears for the appellants.

4. It is common ground that the proceedings taken against the respondent in respect of the unfair means alleged to have been adopted by him at the examination, are in the nature of quasi-judicial proceedings, and as such, in a proper case, orders passed as a result of the said proceedings would be liable to be challenged under Art. 226 of the Constitution. It is also common ground that the High Court would be justified in quashing the impugned order if it is satisfied that the said order is not based on any evidence at all. An order passed by a Tribunal holding a quasi-judicial enquiry which is not supported by any evidence, is an order which is erroneous on the face of it and as such, is liable to be quashed by the High Court in exercise of its high prerogative jurisdiction to issue a writ under Art. 226.

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5. In the present case, the High Court has found that the conclusion of the enquiry Committee that the respondent had copied either from the answer book of the candidate bearing Roll No. 94733 or from a common source, was not supported by any evidence. In coming to this conclusion, the High Court has assumed that the charge against the respondent was that he had copied from the candidate bearing Roll No. 94733. Having made this assumption, the High Court has observed that there was no charge against the respondent that he connived in the act of copying by the other candidate from his answer-book, and it has added that there is no evidence in proof of such connivance. The High Court has also stated that no evidence had been shown to justify the allegations that any outsider had helped the candidate, including the respondent. That, in brief, is the genesis of the final conclusion of the High Court.

6. It appears that the High Court was in error in assuming that the only charge against the respondent was that he had copied from the paper of the candidate bearing Roll No. 94733 and this error is basically responsible for the other observations made by the High Court. The translation of the charge as it has been printed in the record before us, no doubt, seems to support the assumption made by the High Court in regard to the nature of the charge. But the charge was framed in Hindi and it is common ground before us that the Hindi charge has not been properly translated from the record when it seems to show that what was alleged against the respondent was only that he had copied out from candidate bearing Roll No. 94733. The charge, in terms, was that having regard to the identity of the mistaken answers, the apprehension was that there had been copying, and that is very different from saying that the only charge was that the respondent had copied from the other candidate. This position is made very clear when we consider the explanation given by the respondent. In his explanation, the respondent had stated that he had not copied out from the answer-book of any candidate, nor had he allowed anyone to copy out from his answer-book, so far as he could. He admitted that the mistaken answers in the two papers were identical and he pleaded that he could not say any thing as to why this happened. He was also asked whether he had got any help from outside and he gave an answer in the negative. It would thus be seen that at the enquiry, the charge against the respondent was, either that he copied from candidate bearing Roll No. 94733, or that he connived at the said candidate copying from his answer-book, or that both of them had copied from a common source. In either case, it would amount to the adoption, of unfair means. Therefore, in our opinion, the High Court was in error in assuming that the charge was very narrow and did not include the two other alternatives on which the adoption of unfair means was sought to be established.

7. There is another circumstance which is relevant and significant and that has been ignored by the High Court in dealing with this petition. It appears that at the examination held at Bindki center, unfair means were adopted on a very large scale by a large number of students and the examination appears to have been conducted in an atmosphere which was not at all congenial to the

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enforcement of the discipline which has to be observed in conducting examinations. It appears that there are rivalries and party politics in the Municipal Board of Bindki that runs the institution at which this examination was held, and there are rivalries and party politics even amongst the members of the staff. The members of the Municipal Board and other influential people of the locality being undue pressure on the Principal and the Invigilators to help their wards or the wards of their friends and relatives in the Board's Examination. As a result of this unhealthy atmosphere, the center at Bindki for High School examination had been abolished for some years, but on account of public pressure it was re-started in 1960, and the result was very unfortunate.

8. It also appears that on the day of English paper, while students were answering the paper in Room No. 3, an answer paper by some outsider was dropped into the room 15 minutes before the time to answer questions was over. This paper was thrown in room No. 3 from room No. 18. It was a typed paper giving answers to all the Questions. The Assistant teacher, Khajuha, who was one of the Invigilators, complained that the Parcha was typed in the office of the Superintendent of the center, but this allegation was denied. Indeed, from the reports made by the invigilators and the findings made by the Enquiry Committee, it appears that the Invigilators themselves were so much frightened by the prevailing rowdyism and by pressure from influential people that they found themselves powerless to maintain discipline in the examination hall. It is, therefore, not surprising that some invigilators could not prevent copying and in fact, six of them had to be warned to be careful in future.

9. The report of the enquiry committee also shows that the complaints which they were to investigate referred to copying on a large scale in several papers besides Hindi, and it is after examining all the complaints in the light of the evidence available to them that the Committee made its final report; and in that report, it held that the respondent and candidate bearing Roll No. 94733 were guilty of having used unfair means.

10. In dealing with the question as to whether the Committee was justified in coming to this conclusion against the respondent, it would not be reasonable to exclude from consideration the circumstances under which the whole enquiry came to be held and the general background of the prevailing disturbed and riotous atmosphere in the Examination Hall during the days that the High School Examination was held at the center in 1960. Unfortunately, the High Court has ignored this background altogether.

11. Before the High Court, a statement was filed showing the seating arrangement in Room No. 10 where the respondent was sitting for writing his answers. It appears that he was No. 3 in the 3rd row, whereas the other candidate with Roll No. 94733 was No. 4 in the second row. The High Court was very much impressed by the fact that the respondent could not have looked back and copied from the answer-book of the other candidate, and the High Court did not think that there was any evidence to show that the other candidate could

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have copied from the respondents paper with his connivance. We have looked at the incorrect answers ourselves and we are not prepared to hold that the identical incorrect answers were given by the two candidates either by accident or by coincidence. Some of the incorrect answers, and, particularly, the manner in which they have been given, clearly suggest that they were the result of either one candidate copying from the other, or both candidates copying from a common source. The significance of this fact has been completely missed by the High Court. The question before the Enquiry Committee had to be decided by it in the light of the nature of the incorrect answers themselves, and that is what the Enquiry Committee has done. It would, we think, be inappropriate in such a case to require direct evidence to show that the respondent could have looked back and copied from the answer written by the other candidate who was sitting behind him. There was still the alternative possibility that the candidate sitting behind may have copied from the respondent with his connivance. It is also not unlikely that the two candidates may have talked to each other. The atmosphere prevailing in the Examination Hall does not rule out this possibility. These are all matters which the Enquiry Committee had to consider, and the fact that the Enquiry Committee did not write an elaborate report, does not mean that it did not consider all the relevant facts before it came to the conclusion that the respondent had used unfair means.

12. In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the Universities or appellant No. 1 set up Enquiry Committees 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 the 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 Art. 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. Enquiries 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 Tribunal, must scrupulously follow rules of natural justice; but it would, we think, not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary courts of law. In the

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present case, no animus is suggested and no malafides have been pleaded. The enquiry has been fair and the respondent has had an opportunity of making his defence. That being so, we think the High Court was not justified in interfering with the order passed against the respondent.

13. We ought, however, to add that though we are inclined to accept the argument raised by the learned Advocate-General against the decision of the High Court, we do not propose to make any consequential order in favour of the appellants, because the learned Advocate-General has fairly conceded that he does not want any such order in the present appeal. It appears that the respondent has, in June, 1962, passed his Intermediate Examination and it has been fairly conceded that there is no intention to disturb his career under the present circumstances. The learned Advocate-General wanted a decision from us in this appeal because he apprehended that the reasoning adopted by the High Court in setting aside the order passed against the respondent may be construed to mean that under Art. 226, the High Court can examine the merits of the order passed by appellant No. 1 in such cases.

14. The result is, though we agree with the appellants that the order passed by the High Court was not justified, we refrain from setting it aside for the reasons just explained. There would be no order as to costs.

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