
(1972) 03 AHC CK 0026
In the Allahabad High Court
Case No : Civil Misc. Writ No. 504 of 1972

Triambak Pati Tripathi

APPELLANT

Vs

The Board of High School and Intermediate Education, U.P.,
Allahabad

RESPONDENT

Date of Decision : 09-03-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1973 All 1 : (1972) 42 AWR 330 : (1972) 2 LLJ 451

Hon'ble Judges : H.N. Seth, J;G.C. Mathur, J;A.K. Kirty, J

Bench : Full Bench

Advocate : S.R. Misra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Seth, J.—The petitioner Triyambakpati Tripathi was a candidate for the High School Examination of the Board of High School and Intermediate Education, U. P., (hereinafter referred to as the Board) held in the year 1971. He appeared in that examination as a regular student of Belpur Higher Secondary School from the Higher Secondary School Kemptiarganj Centre. On receipt of a complaint that there was masa copying at that Centre, the examiners concerned were alerted and were required to evaluate the answer books carefully and to report if there was any indication of use of unfair means by the candidates appearing at that Centre. The examiner of Science Second Paper reported that he suspected use of unfair means by a number of candidates in answering question No. 2 of that paper. The report of the examiner was endorsed also by the Head Examiner concerned. Thereupon the Examinations Committee of the Board got the answer books of the candidates appearing at that centre examined by a screening committee consisting of experts in the subject. Members of the screening Committee examined the answer books of various candidates and reported that the petitioner along with other candidates was suspected to have used unfair means in answering not only question No. 2 of the Science Second paper but

also in answering question No. 1 of the Science 1st paper. The Examinations Committee then withheld the result of the petitioner and other candidates suspected of using unfair means and resolved that art "on the spot Enquiry Sub-Committee" be set up to enquire into the matter in detail and to submit its report before the Examinations Committee. It also framed charge-sheets mentioning the material which indicated the use of unfair means by the petitioner and other candidates. Copies of the two charge sheets given to the petitioner have been filed as annexures "A" and "B" to the counter affidavit filed on behalf of the respondent Board. These charge-sheets further required the petitioner and others to explain why proceedings under Rule 2 (1) of Chapter VI of the Board's calendar be not taken against them.

2. The spot Enquiry Sub-Committee visited petitioner's centre on 28th August, 1971, and handed over the two charge-sheets prepared by the Examinations Committee to him. Members of the Spot Enquiry Committee explained the allegations to the petitioner and showed him the answer books of other candidates about which reference had been made in one of the charge-sheets. The petitioner gave his explanation in respect of the allegations in the charge-sheets and then subscribed his signatures to a declaration that he had given his explanation voluntarily and after fully understanding the matter, that the relevant answer books had been shown to him and that he had nothing further to say in the matter. The Spot Enquiry Sub-Committee submitted its report to the Examinations Committee which after examining the answer books, the charge sheets of the candidate, the explanation given by him and the report of the Spot Enquiry Sub-Committee resolved, vide its resolution No. 178 dated October 6, 1971, that the High School Examination result of the petitioner for the year 1971 be cancelled, and he be also debarred from the Board's Examination for the year 1972. The resolution passed by the Examinations Committee was duly approved by the Chairman of the Board. This decision was communicated to the petitioner through the principal of the Institution concerned.

3. On receipt of this communication, the petitioner filed the present writ petition before this Court contending that there was no material before the examinations committee for finding him guilty of having used unfair means at the examination, and that its decision was based merely on surmises and conjectures. He pleaded that the procedure adopted by the Examinations Committee and the Sub-Committee for punishing the petitioner violated the principles of natural justice and as such the order passed by the Examinations Committee cancelling his examination and, debarring him from appearing at the Board's 1972 Examination deserved to be quashed. He also complained that in the matter of punishment he has been improperly discriminated as against one other candidate, viz., Jai Ram Pandey, a student of the same institution who was caught red handed using unfair means. In his case the Examinations Committee merely cancelled his 1971 examination.

4. When this petition was taken up for preliminary hearing, learned counsel for

the petitioner relied on certain observations made by a Division Bench of this Court in the case of Prabhat Kumar v. Board of High School and Intermediate Education, U. P. 1971 All LJ 1391, in support of his contention that it was incumbent upon the Examinations Committee to itself afford the petitioner an opportunity of being heard both in regard to the conclusions recorded by the Sub-Committee as also the punishment proposed to be awarded and that if this was not done the principles of natural justice were violated and the order punishing the petitioner deserved to be quashed. The Bench hearing the petition felt that these observations made in Prabhat Kumar's case required reconsideration and therefore referred the case for decision by a Full Bench. This is how the case has come up for decision before us.

5. In the case of Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, it has been held that the Examinations Committee while dealing with the cases of examinees using unfair means in examination hall acts quasi-judicially and the principles of natural justice apply to the proceedings before it. The question that therefore arises for consideration is whether the procedure adopted by the Examinations Committee violated the principles of natural justice.

6. Learned counsel for the petitioner urged that in this case the procedure adopted by the Examinations Committee violated the principles of natural justice inasmuch as--

(1) the Examinations Committee obtained the explanation of the petitioner through a sub-committee appointed by it instead of itself requiring the petitioner to explain the allegations made against him.

(2) While considering the case against the petitioner, the examinations committee took into consideration the report made by the Spot Enquiry Sub-Committee without bringing it to his notice and without affording him an opportunity to explain it

(3) The Spot-Enquiry Sub-Committee did not afford adequate opportunity to the petitioner to explain his case and he was not given an opportunity to show cause against the proposed punishment.

7. In order to test the validity of the aforesaid contentions, we have to determine the precise scope and ambit of the applicability of the principles of natural justice in such cases.

8. In *Russel v. Duke of Norfolk* (1949) 1 All ER 109 at p. 110, MS, Tucker, L. J., observed:--

"The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever stand is adopted, one essential is that the

person concerned should have a reasonable opportunity of presenting his case."

9. Similarly in *Local Govt. Board v. Arlidge* 1915 AC 120, Viscount Haldane, L. C. observed:--

"My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case. But it does not follow that the procedure of every such tribunal must be the same. But what that procedure is to be in detail must depend on the nature of the tribunal. I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In *Board of Education v. Rice* 1911 AC 179 he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on every one who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial"

10. Again in the case of *Byrne v. Kinematograph Renters Society Ltd.* (1958) 2 All ER 579, Lord Harman, observed:--

"What, then are the requirements of natural justice in a case of this kind? First, I think 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, I do not think that there really is anything more."

11. In the case of *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, , while dealing with the scope of applicability of principles of natural justice in proceedings before an authority which is required to act in a quasi-judicial manner, learned Judges of the Supreme Court in paragraph 12 of the judgment observed as follows:--

"As to the manner in which it should give an opportunity to the examinee concerned to be heard, that is a matter which can be provided by Regulations or Bye-laws if necessary. As was pointed out in 1915 AC 120 all that is required is that the other party should have an opportunity of adequately presenting his case. But what the procedure should be in detail will depend on the nature of the tribunal. There is no doubt that many of the powers of the Committee under Chapter VI are of administrative nature; but where quasi-judicial duties are entrusted to an administrative body like this it becomes a quasi-judicial body for performing these duties and it can prescribe its own procedure so long as the principles of natural justice are followed and adequate opportunity of presenting his case is given to the examinee."

12. In the case of *Suresh Koshy George Vs. University of Kerala and Others*, it was observed as follows:--

"Suffice it to say that in the case before us there was a fair inquiry against the appellant, the officer appointed to enquire was an impartial person; he cannot be said to have been biased against the appellant; the charge against the appellant was made known to him before the commencement of the enquiry; the witnesses who gave evidence against him were examined in his presence and he was allowed to cross-examine them and lastly he was given every opportunity to present his case before the Inquiry Officer. Hence we see no merit in the contention that there was any breach of the principles of natural justice."

A consideration of these authorities leads us to the conclusion that the essential principles of natural justice that are to be observed by an authority dealing with the case in quasi-judicial manner are as follows:--

- (1) The person whose rights are to be affected must be given notice of the case or the charges which he has to meet
- (2) He must be given an opportunity to make a representation and to explain the allegations made against him and to have his say in the matter; and
- (3) The authority conducting the proceedings must not be biased and should act in good faith.

13. In our opinion the first two principles necessarily imply that the person proceeded against must be informed about the material on the basis of which the allegations made against him are founded so that he may have an opportunity of explaining them and putting forward and substantiating his own version. Rules of natural justice not being embodied rules. It is open to the authority concerned to evolve its own procedure for acquainting the person concerned with the charges and the material on which they are founded, and also for affording him an opportunity of explaining those charges and putting forward his case. The procedure will necessarily vary with the facts, circumstances and nature of the case, constitution of the authority dealing with it and the rules under which it functions.

14. Let us now examine the complaint of the petitioner regarding the violation of principles of natural justice in this case. His first complaint is that the Examinations Committee obtained his explanation through a sub-committee instead of itself requiring him to explain the allegations made against him. In order to substantiate this complaint, learned counsel for the petitioner relied on decision of a Division Bench of this Court in the case of 1971 All LJ 1391. In that case, the result of Prabhat Kumar, who appeared in the High School Examination of the Board in the year 1970, was cancelled after following a procedure similar to that followed in this case. A Division Bench of this Court relied upon the following passage appearing in the judgment of the Supreme Court in the case of Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, ,

"This divided responsibility is destructive of the concept of judicial hearing. Such

a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the argument and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We, therefore, hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

and observed as follows:--

"In our opinion the procedure followed in the case before us is exactly what has been condemned by the Supreme Court in the above case and what in substance amounts to contravention of rules of natural justice. The purpose of appointment of the sub-committee under bye-law 46 appears to be to enable that committee to make an on the spot enquiry into cases of use of unfair means in the Board's examination and to examine in detail matters which required careful scrutiny but cannot be disposed of in the meeting or the Board or its committee. After on the spot enquiry or enquiry into individual cases in the manner the sub-committee may consider appropriate the conclusions recorded by it are no more than tentative because final authority is the Examinations Committee which may accept recommendation in whole or in part or may reject it altogether. Further, bye-law 46 does not appear to contemplate that the sub-committee shall make recommendation to the Board about the quantum of punishment which may be awarded. But assuming that it may do so, the authority which has to decide upon the appropriate punishment and to award the same is the Examinations Committee, Keeping this in view it appears manifest that, whereas it was no doubt fit and proper that the petitioner be allowed to appear at the sub-committee enquiring into the matter and defend himself, it was incumbent on the Examinations Committee to afford the petitioner an opportunity of being heard both in regard to the conclusion recorded by the sub-committee and also punishment to be awarded. There is no controversy that this was not done in the present case and we have no doubt that the impugned order of the Board whereby the examination of the petitioner has been annulled and he has been debarred from appearing at the 1971 Examination must be quashed."

15. In Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, , the Supreme Court had to consider whether the objections filed by the transport operators against a scheme prepared and published u/s 68C of the Motor Vehicles Act had been properly disposed of. Rules framed under the Motor Vehicles Act required that the State Government shall decide the matter after giving a personal hearing to the objectors. In this case personal hearing was given by a Secretary to Government and the Minister passed the order approving the scheme. This procedure was condemned by the Supreme Court in these words:--

"This divided responsibility is destructive of the concept of judicial hearing."

It must be remembered that these words were spoken in respect of the statutory right of personal hearing conferred by the rules and not in respect of any right of hearing flowing from the principles of natural justice. The Supreme Court explained its observation made in Nageshwar Rao's case in a subsequent case. General Manager, Eastern Railway and Another Vs. Jawala Prosad Singh, , by making the following observation:--

"The observations of this Court in Gullapalli Nageshwar Rao's case have no bearing on the facts of the present case. There it was held that a personal hearing was given by a Secretary of a Department and the Minister of the State was to decide things put up by the Secretary, the procedure defeats the object of personal hearing. The observation at page 357 that "personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of arguments and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides then personal hearing becomes an empty formality" can have no application to the facts of the case before us. The members of the Enquiry Committee who heard the arguments had the entire record before them and they had to go by the record."

This passage makes it abundantly clear that the decision in Nageshwar Rao's case was in respect of the requirement of personal hearing. In the case before us neither the Intermediate Education Act nor the Rules and Regulations framed thereunder require the Examinations Committee to give a personal hearing to the candidate. There is thus no statutory requirement of personal hearing.

16. It was contended by the learned counsel for the petitioner that the principles of natural justice required the Examinations Committee to give a personal hearing to the candidate against whom action was proposed to be taken and therefore, the decision of the Supreme Court in Nageshwar Rao's case is fully applicable to an enquiry which is made by the Examination Committee. We do not think that personal hearing is one of the necessary requirements of principles of natural justice.

17. In the case of State of Assam and Another Vs. Gauhati Municipal Board, while dealing with the case u/s 228 of the Assam Municipalities Act, the Supreme Court observed as follows:

"Therefore, where a provision like Section 228 is fully complied with as in this case and the Board does not ask for an opportunity for personal hearing or for production of materials in support of its explanation, principles of natural justice do not require that the State Government should ask the Board to appear for a personal hearing and to produce materials in support of the explanation. In the absence of any, demand by the Board of the nature indicated above, we cannot agree with the High Court that merely because the State Government did not call upon the Board to appear for a personal hearing and to produce material in support of its explanation it violated the principles of natural justice.

18. Again in the case of Union of India (UOI) Vs. Jyoti Prakash Mitter, , learned Judges of the Supreme Court observed as follows: --

"Article 217(3) does not guarantee a right of personal hearing. Nor is a personal hearing a necessary incident of rules of natural justice. Except in proceedings in Courts, a mere denial of opportunity of making an oral representation will not, without more, vitiate the proceeding. A party likely to be affected by a decision entitled to know the evidence against him and to have an opportunity of making a representation. He, however, cannot claim that an order made without affording him an opportunity of a personal hearing is invalid. The president while, making an enquiry is not a court and the giving of personal hearing is entirely discretionary."

19. There is thus neither any statutory requirement, nor any requirement of principles of natural justice which compels the Examinations Committee to give a personal hearing to the candidate. That being so, the principle laid down by the Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, , cannot be applied to the enquiry by the Examinations Committee. The Examinations Committee was entitled to evolve a procedure for informing a candidate of the charges levelled against him and about the material proposed to be used and for giving him an opportunity of explanation through the Spot Enquiry Sub-Committee. With respect we are unable to agree with the conclusions arrived at by the learned Judges in Prabhat Kumar's case 1971 All LJ 1391, on the basis of the decision of the Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, . The first complaint of the petitioner based on Prabhat Kumar's case must therefore be rejected.

20. Second complaint of the petitioner is that the report of the Spot-Enquiry Sub-Committee was not given to him and the Examinations Committee used the material without disclosing it to him. In doing this, the Examinations Committee violated the principles of natural justice. We have already set out earlier the principles of natural justice and in our opinion they do not require the furnishing of a copy of the report to the candidate. A similar question arose before the Supreme Court in the case Suresh Koshy George Vs. University of Kerala and Others, . In that case Suresh Koshy a student of the Kerala University was suspected of having used unfair means in answering the mathematics first paper. Vice-Chancellor of the University ordered a formal enquiry and appointed a retired Principal as the Enquiry Officer. Suresh Koshy appeared before the Enquiry Officer. Subsequently, the Enquiry Officer submitted a report to the Vice-Chancellor holding Suresh Koshy guilty of malpractice during the examination in question. On the basis of that report the Vice-Chancellor issued a show cause notice to Suresh Koshy. It was contended that the rules of natural justice were violated inasmuch as Suresh Koshy was not supplied a copy of the Enquiry Officer's report before obtaining his explanation. The Supreme Court repelled this contention and held that there was no violation of any principle of natural

justice merely because the report of the enquiry officer was not brought to the notice of the examinee concerned before obtaining his explanation.

21. Learned counsel for the petitioner placed strong reliance on the case of Suresh Kumar Vs. Punjab University, . In this case during disciplinary proceedings against Suresh Kumar the matter was enquired into by the Assistant Registrar, Punjab University. During enquiry proceedings the Assistant Registrar after perusing the report of the Head Examiner in the English paper and the statement of the petitioner, referred the matter to an expert for his considered opinion. This report was adverse to Suresh Kumar who was never informed about it. Relying upon the expert opinion, the Standing Committee punished the examinee. The Punjab High Court held that, in the circumstances, the order passed, relying upon the expert opinion, could not be upheld. It appears that in this case the Standing Committee relied upon the opinion of the expert as a piece of evidence indicating that the petitioner was guilty of using unfair means in the examination. It was not merely the report submitted by a fact finding body but the opinion given by an expert that was relied upon as material evidence. The question whether it was necessary to supply to the candidate concerned a copy of the Enquiry Officer's report was not at all involved in the case. At the instance of the petitioner we had the report of the Spot Enquiry Sub-Committee produced before us and we have perused the same. This report indicates that the Spot Enquiry Sub-Committee interviewed a large number of candidates who were suspected of using unfair means in Board's Examination. For the facility of the Examinations Committee, this report was prepared in a tabular form indicating the allegations made against each candidate, the material on the basis of which those allegations were made and the explanation given by the candidate. The material mentioned in the report was the same which had been disclosed to the candidate concerned. No doubt the report further contained the opinion of the Sub-Committee about the plausibility of the explanation given by the petitioner, but there was no other material, referred to in the report, indicating that the petitioner had used unfair means in the examination which had not been brought to his notice before obtaining his explanation. The opinion expressed by the Sub-Committee about credibility of the explanation given by various candidates certainly was no material which could have indicated that the petitioner had used unfair means. The Examinations Committee was to decide the matter on its own after looking into the charges, the explanation given by the petitioner and the relevant answer books. In our opinion, it was not necessary for the Examinations Committee to disclose this report to the candidate and the petitioner's second complaint has no substance.

22. Coming now to petitioner's third complaint, namely that the Spot Enquiry Sub-Committee did not afford an adequate opportunity to the petitioner to explain his case and he was not given an opportunity to show cause against the proposed punishment, we find that in this case the Examination Committee got all the material, which led to an inference that the petitioner had used unfair means in answering the two questions brought to the notice of the petitioner by

means of a chargesheet given to him through the Spot Enquiry Sub-Committee. The petitioner was provided an opportunity to explain the allegations. He gave whatever explanation he thought proper and made a declaration that he had nothing further to say in the matter. In the charge-sheet his attention had been invited to the fact that the material that was being brought to his notice indicated that he was guilty of using unfair means and that he was required to show cause why action under paragraph (L) of Chapter VI of the Board's Calendar be not taken against him. The petitioner gave his explanation and said that he had nothing further to say in the matter. It will thus be seen that the procedure adopted gave ample opportunity to the petitioner to explain the allegations made against him and to show cause against the punishment which could be meted out to him under paragraph 2 (L) of Chapter VI of Board's calendar. Rules of natural justice do not require, as do the provisions of Article 311 of the Constitution; the giving of an opportunity to show cause against the proposed punishment; they merely required the affording of an opportunity to explain or meet the charges or allegations levelled against the person concerned. But in the present case the petitioner was given even an opportunity to have his say with regard to the punishment. The charge-sheets required him to show cause why action should not be taken against him under paragraph 2 (L) of Chapter VI, which prescribes the punishments for those found using unfair means at examinations. The petitioner thereby got full opportunity to say whatever he liked in respect of the punishment in case the charges levelled against him were made out.

23. It was next contended that in this case the spot Enquiry Sub-Committee compelled the petitioner to give his answers to the question contained in the charge sheet in a very short time without affording him an opportunity of thinking over the matter. The petitioner, therefore, was not given an adequate opportunity to explain his case and the ultimate order cancelling his result cannot be upheld. This contention is not supported by any averment made in the writ petition. Moreover annexures A and B filed along with the counter affidavit show that the petitioner was given full opportunity to have his say in the matter. Towards the end of these documents the petitioner has subscribed a declaration to the effect that he gave his explanation voluntarily and after fully understanding everything and that he had nothing further to state in the matter. It is, therefore not possible to accept the petitioner's contention that the Spot Enquiry Sub-Committee did not afford him adequate opportunity to explain his case. In our opinion there is no substance even in petitioner's third complaint about the breach of principles of natural justice.

24. Learned counsel for the petitioner next contended that there was no material before the committee for coming to the conclusion that the petitioner had used unfair means at the examinations and that the finding of the Examinations Committee was based merely on surmises and conjectures. It has been pointed out in the case of *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, , that 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. In dealing with the validity of the orders passed by such authorities the High Court does not sit in appeal over the decision of the authority concerned. Its jurisdiction is limited, and it is true, that if the order in question is not supported by any evidence at all, the High Court may quash it; but the conclusion that the order in question is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify that conclusion. In the case before us, so far as question No. 1 of Science first paper was concerned, it was brought out that the petitioner had found out the square root of 45.5625 as 6.75 without doing any rough work or calculation. Petitioner explained it by saying that he worked out the square root orally. The Examinations Committee was of opinion that it was not possible to accept the explanation given by the petitioner that he worked out the square root of such a figure orally. After rejecting the explanation given by the petitioner it was open to the Examinations Committee to draw an inference that the petitioner had found out the square root by some improper method. It cannot be said that no reasonable person could have rejected the explanation given by the petitioner or that there was no basis for its rejection. Decision of the Examinations Committee was based on the intrinsic evidence provided by petitioner's own answer book, which, if unexplained, could lead to an inference that petitioner had used unfair means in answering that question. We are, therefore, of opinion that there was material on the basis of which the Examinations Committee could come to the conclusion that the petitioner was guilty of using unfair means in answering question No. 1 of science first paper.

25. So far as petitioner's answer to question No. 2 of Science Second Paper is concerned, the material before the Examinations Committee was that the petitioner was required to find out the equivalent weight of copper from the data mentioned in the question. Petitioner's solution of the question showed that first four or five lines were unnecessary and redundant. These superfluous lines tallied with those in the solutions given by six other candidates whose roll numbers were mentioned in the charge-sheet. The superfluous steps in the petitioner's answer were strikingly similar to those in the answers of the six other candidates. All of them solved the question by assuming the atomic Weight of copper as 63.5, an assumption which was not at all necessary to be made in answering that question. In our opinion, on this material a reasonable body of persons could come to a conclusion that the petitioner had resorted to unfair means in answering that question.

26. We are, therefore, of opinion that there is no substance in the argument that the finding of the Examinations Committee that the petitioner was guilty of using unfair means in answering the two questions was not based on any material on the record.

27. Last point urged on behalf of the petitioner is that he has been improperly discriminated as against one other candidate, namely Jai Ram Pandey, student of the same institution, who was caught using unfair means red-handed. In his case, the Examinations Committee merely cancelled his 1971 Examination, whereas in the case of the petitioner not only his 1971 examination has been cancelled but he has also been debarred from appearing in the Board's examination for 1972. It has been pointed out in the counter-affidavit that the case of Jai Ram Pandey was different, inasmuch as Jai Ram Pandey was charged with bringing unauthorised material in the examination hall which material he did not use. The petitioner, on the other hand, was charged and found guilty of having actually used unfair means in the two papers. In the circumstances, there is no parity between the cases of the petitioner and Jai Ram Pandey. It cannot, therefore, be said that the respondents practised any discrimination in dealing with the cases of these two candidates.

28. In the result, we find no substance in any of the submissions made on behalf of the petitioner. The petition fails and is dismissed. Stay order dated 11th of February 1971 is discharged. There will be no order as to costs.