

**(1958) 07 PAT CK 0011**

**In the Patna High Court**

**Case No :** Misc. Judicial Case No. 688 of 1957

Uma Shankar Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 09-07-1958

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** AIR 1959 Patna 224 : (1958) 6 BLJR 712

**Hon'ble Judges :** V. Ramaswami, C.J.; R.K. Choudhary, J

**Bench :** Division Bench

**Advocate :** Sankat Haran Singh and Birendra Mohan Singh, for the Appellant;  
Government Pleader, for the Respondent

**Final Decision :** Dismissed

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## Judgement

1. This application is made on behalf of Uma Shankar Singh for grant of a writ under Article 226 of the Constitution, calling upon the respondents to declare the result of the petitioner at the Matriculation Examination held in March, 1957, by the Bihar School Examination Board. The petitioner has also prayed for a writ to quash the order of the Bihar School Examination Board, respondent No. 2, dated the 14th of August, 1957, debarring the petitioner from appearing at any University or Board examination prior to the Annual Examination of 1959. Cause has been shown in this case by the learned Government Pleader on behalf of the respondents.

2. The petitioner was a student of Gait High English School, Aurangabad, and he appeared at the Annual Secondary School Examination held in March, 1957. The petitioner's roll number was Aur. 18, and the examination centre was the Town High English School at Aurangabad. The petitioner appeared at the Annual Examination held by respondent No. 2 in March, 1957, but when the results of the examination were announced the name of the petitioner was not published.

On 14-8-1957, a letter was sent to the Head Master of Gait High English School

by respondent No. 2, saying that the petitioner along with some other candidates was debarred from appearing at the University or Board examination prior to the Annual Examination of 1959. A representation was made by the petitioner on 26-8-1957. In reply to the representation the Board informed the petitioner on 28-9-1957, that the petitioner had been debarred for two years since there was a charge of using unfair means and "the matter has been thoroughly examined by the Board before awarding punishment."

A copy of this letter is annexure F to the application of the petitioner. The case of the petitioner is that he was not given an opportunity to show cause against the charge of using unfair means and so the order of respondent No. 2 debarring him for two years from appearing in any University or Board Examination is legally invalid and must be quashed by a writ under Art 226 of the Constitution.

3. It was argued on behalf of the petitioner that the order of the Board holding that the petitioner was guilty of using unfair means was an order which adversely affected the reputation of the petitioner -- it even affected his future career --and so it was incumbent upon the Board to give an opportunity to the petitioner to show cause before finally condemning him.

It was conceded by the learned Counsel that there is no statutory provision requiring the Board to give an opportunity to the petitioner to show cause. The argument of the petitioner is however based upon the principle of natural justice. We do not agree with this contention advanced on behalf of the petitioner. The authority of the Board to make an order debarring the petitioner is derived from Section 6 (1) and Section 6 (2) (c) of Bihar Act 7 of 1952 which are in the following terms:

"6. (1) The Board shall be responsible for making all arrangements for the conduct of examinations held under this Act, and generally for formulating ways and means for the purpose of improving the machinery for the assessment of the attainments of the students studying in high schools".

"6. (2) In particular and without prejudice to the generality of the foregoing powers, the Board XX X X

(c) shall admit candidates to its examinations -and may disqualify any candidates for presenting themselves for such examinations for any reasons which the Board considers to be adequate."

There is no provision in the statute or in the rules made under the statute requiring the Board to give notice to the person affected before making an order debarring him from appearing at the Annual Examination. In our opinion, the Board in holding an examination under the statutory powers given by Section 6 and in punishing the misconduct of candidates in the course of examination is acting as an administrative body and is not acting in a quasi judicial capacity. There is no question of any lis between the parties and the principle of *audi alteram partem*" does not apply in this case. We are therefore not prepared to

say that the Board is bound as a matter of law to give notice to the petitioner before coming to a finding that he is guilty of misconduct and thereafter taking I action for punishing him for this misconduct. But this proposition is subject to the exception that if there is a proper case made out on behalf of the petitioner showing that the Board has acted arbitrarily, capriciously, mala fide or from any extraneous consideration, the High Court has jurisdiction to interfere with the order of the Board by the issue of a proper writ.

In the present case, however, there is no allegation on want of faith in the application of the petitioner. It is not alleged on behalf of the petitioner that the Board has acted arbitrarily or capriciously or that the Board has taken into account extraneous considerations in passing the order of punishment. The view that we have taken is supported by a Division Bench decision of the Bombay High Court in Nanik Dharamdas Vazirani Vs. Maharaja Sayajirao University, Baroda and Others, , in which it was held that the function of the "University in holding examination and in seeking to punish misconduct of a candidate at the examination was an administrative function and there was no legal obligation on the part of the University to give notice or opportunity to the affected candidate before making final the order of punishment.

It may be that the Board may in its discretion think that in a particular case notice should be given to the candidate affected before passing the final order of punishment. It may be that in a particular case the Board may feel doubt about the charge levelled against a candidate and may require an explanation before making a final order of punishment. That is of course a matter of discretion with thp Board, but there is no legal obligation cast upon the Board to give an opportunity to the candidate affected to show cause before taking action

The same view has been expressed by a Division Bench of the Allahabad High Court in Jogendra Raj Kishore Vs. University of Allahabad and Others, and by Subba Rao J., of the Madras High Court in C.D. Sekkilar Vs. R. Krishnamoorthy, . We are concerned in the present case with a matter of educational discipline, with the proper conduct of examinations by a statutory body like the Bihar School Examination Board and the necessity of keeping proper discipline and maintaining good behaviour among the candidates who appear at the examination,

In a matter of this kind the High Court would be slow to interfere with the discretion and autonomy of a statutory body like the Bihar School Examination Board, provided the authority concerned has properly exercised its discretion and is not actuated by an extraneous consideration. As we have already said, there is no allegation in the present case by the petitioner that the Board had acted mala fide or capriciously, and we think that there is no ground made out on behalf of the petitioner for grant of a writ against the respondents.

4. For these reasons this application fails and is dismissed. There will be no order as to costs.