

(1970) 09 CAL CK 0013
In the Calcutta High Court
Case No : Original Order No. 53 of 1970

University of Calcutta

APPELLANT

Vs

Rabindranath Adhikari and Others

RESPONDENT

Date of Decision : 09-09-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 75 CWN 102

Hon'ble Judges : Sabyasachi Mukharji, J;Arun Kumar Mukherjea, J

Bench : Division Bench

Judgement

Sabyasachi Mukharji, J.—This appeal arises out of an order and judgment of P. K. Banerjee, J: dated 16th February, 1970. The petitioner is a student of the R. G. Kar Medical College. The petitioner was admitted as a pre-medical student in 1965 and he has passed the first M.B.B.S. examination Part I in 1968. The petitioner appeared in the first M.B.B.S. examination Part II in December, 1968. After the publication of the result the petitioner found that he has been reported against. By a letter dated 14th February, 1969, the petitioner was asked by the Secretary, Board of Discipline to appear before the Sub-Committee of the Board of Discipline on the 26th February, 1969 as it was stated that there was a report against the petitioner that he has committed breach of discipline in the examination hall. In the charge-sheet it has been stated that the petitioner was found copying from some printed pages and he was found to be in possession of certain printed pages detached from a book while he was appearing for his Physiology paper. The petitioner appeared before the Board. We have the affidavit of one Mr. Ajit Kumar Dutta, who was the Secretary of the Council for Post-Graduate Studies in Medicine and who acted as a member of the Sub-Committee of the Board of discipline. He states in his affidavit in paragraphs 5 and 6 that the petitioner was interrogated by the members and further that all papers and documents relevant for the case including the report of the invigilator and loose papers which were found and seized from the custody of the petitioner at the examination centre were shown to the petitioner. In the said paragraphs it

was stated that the petitioner was asked to explain his conduct. It has been asserted that the petitioner did not give any satisfactory explanation apart from a bare denial. The petitioner was asked to explain the circumstances under which loose papers were seized from his custody. The petitioner could not, according to the affidavit of Mr. Dutta give any satisfactory explanation. It has been further stated clearly that the petitioner did not demand production of either the Presiding Officer who forwarded the case to the University authorities or the said invigilator who seized the incriminating papers and documents from the custody of the petitioner. After consideration of the conduct of the petitioner and the report the petitioner was reported against and the committee recommended that the petitioner's examination be cancelled and be debarred from appearing in M.B.B.S. examination Part II for next two terms.

2. In the petition under Article 226 moved by the petitioner challenging the action of the University several grounds were taken but mainly one and was urged before the learned trial Judge and only one ground has been pressed before us and that is the ground of violation of the principles of natural justice. It was not specifically stated in the petition that the invigilator was not produced for examination by the petitioner. That would be apparent from the judgment of the learned trial Judge. Upon this it appears that the learned trial Judge gave an opportunity to the petitioner to file a supplementary affidavit. In the supplementary affidavit the petitioner stated that the University never produce the person who reported the occurrence before the Sub-Committee and as such it amounted to a denial of valuable right of the petitioner. Banerjee, J., was of the opinion that because the invigilator was not produced for examination, there has been violation of the principles of natural justice and as such the petitioner did not have reasonable opportunity. Upon that ground the learned Judge has made the Rule absolute and has directed the University authorities to publish the examination result and has cancelled the order of the University." This appeal is by the University and it is directed against the aforesaid order of Banerjee, J.

3. The only short question which we are concerned in this appeal is whether there has been any denial of reasonable opportunity to the petitioner in the facts and circumstances of this case. In this case, it has to be remembered that the body against whom the charge of violation of the principles of natural justice has been made is a body which is not guided by any technical rule or rules of evidence or any statutory rules for regulating its procedure. It must follow, therefore, broadly such rules which would ensure reasonable opportunity to a party whose case it is adjudicating, to present his case before the Committee. Apart from that, there is no further requirement. It appears that in this case there was no demand for the production of the invigilator for cross-examination.

4. Reasonable opportunity means that a person should be told all that have been found against him and should be given a reasonable opportunity to adduce any evidence either to contradict or to challenge that has been found against him. In this case if the petitioner had demanded the production of the invigilator to

challenge his veracity, different considerations might have arisen. But if the petitioner does not challenge the veracity of the version of the invigilator there is no inherent requirement of natural justice that the invigilator or anybody who has reported against the petitioner, whose report is being considered by the Committee and which was shown to the petitioner, should be produced for cross-examination. The right of cross-examination is not engrafted in the principles of natural justice per se. Right of hearing also does not necessarily always include the right to cross-examine every person whose report or statement is being considered by the adjudicating or enquiry body. Whether a party should have a right of cross-examination must depend on the facts and circumstances of each case. It might be that in a case where a party wants to challenge the veracity of a report or a statement made against him, he might have right of cross-examination. In this case, we are not concerned with that position. Here from the statements made in the petition and in the affidavits it is abundantly clear that no such demand was made. The fact that the right of hearing does not always include right of cross-examination has been stated by the Supreme Court in the case of (1) *The State of Jammu and Kashmir and others v. Bakshi Gulam Mohammad and anr.*, AIR 1967 SC 123 at page 131. The same view was expressed by a Bench decision of this Court in the case of (2) *Kishanlal Agarwalla Vs. Collector of Land Customs*, . In that view of the matter we are of the opinion that in the facts and circumstances of the case the petitioner has not been able to establish that there has been any violation of any principle of natural justice. Our attention was drawn to the decision of the learned judge in the case of (3) *Subhas Chandra Paul Vs. University of Calcutta and Others*, , on which reliance has been placed by the learned judge in the instant case. From the report it is not clear whether there was any demand made in that case for the production of the person who had reported against the petitioner in that case. If that decision be an authority for the proposition that irrespective of any demand the mere non-production of the person whose statement is considered by the enquiry committee amounts to violation of the principles of natural justice, we are unable, with respect, to accept the correctness of that proposition.

5. There is another aspect of the case. The petitioner, in this case has not categorically denied the version given by the University authorities. His denial in the affidavits is rather evasive. In the demand for justice, which is Annexure "C" to the petition, the petitioner has not made any specific allegation about his being refused the opportunity of cross-examination. Where the fact whether there has been any violation of the principles of natural justice is itself dependent upon a finding which can only be arrived at after adjudication of a disputed question of fact it is not proper that such question should be agitated in the writ proceedings and for this reliance may be made to the observations of the Supreme Court in (4) *Union of India (UOI) Vs. T.R. Varma*,

6. Mr. Dutta, appearing on behalf of the respondent, placed some reliance on the decision in the case of (5) *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, , as also on the decision

of D. Basu, J. in the case of (6) Kshetra Mohan Nath v. District Controller of Stores, AIR, 1970 Cal. 131. But the facts of those cases were so entirely different that it is not necessary to discuss those cases in detail. In the aforesaid view of the matter, we are unable to sustain the judgment and the appeal must accordingly be allowed. The judgment and order of P. K. Banerjee, J. dated 16 February, 1970 are set aside, the application made under Article 226 of the Constitution is hereby dismissed and the Rule Nisi issued thereon is accordingly discharged. There will be no order as to costs.

Cerified for two counsel as against their own clients.

Arun K. Mukherjea, J.

I agree.