

(2002) 03 AP CK 0107

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1486 of 2002

V. Ramachander Goud

APPELLANT

Vs

Controller of Examinations, Osmania University, Hyderabad
and Another

RESPONDENT

Date of Decision : 05-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2002 AP 275 : (2002) 3 ALD 286 : (2002) 3 ALT 657

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : T. Amarnath Goud, for the Appellant; K. Ramakranth Reddy, SC, for the Respondent

Final Decision : Allowed

Judgement

Ghulam Mohammed, J.—The petitioner is a student a Pendekanti Law College, Himayatnagar Hyderabad, studying 2nd Year - Five Year LLB course. While writing the examination in the Economics subject on 11-10-2001, the sitting squad took away the petitioner's answer book, writing pad and seized them and also prevented him from completing the answers in Economics examination and did not allow him to write the exam in the subject "History of Courts". It was alleged that some words were written on the writing pad and thus the petitioner had committed an objectionable act. The seized items were examined by the Malpractices Committee and thereafter, a show-cause notice dated 12-12-2001 was issued and serviced on 21-12-2001 and the petitioner submitted his explanation dated 24-12-2001. The petitioner also filed a detailed representation dated 29-12-2001 before the committee pleading innocence and that the answer-book and writing pad were not verified. While so, the first respondent passed order dated 8-1-2002 stating that the petitioner while writing Economics-II Paper IV, was having prohibited material "writing on the pad" and therefore the provisions of Regulations under Ordinance VII - Conduct of Examination Part-V

Clause 2 are attracted and accordingly, his examination result was cancelled and he was debarred from appearing in the subsequent exam. However, he was allowed to write the supplementary examination to be held in the year 2002.

2. The petitioner categorically submits that the Malpractices Committee did not verify his answer books and the writing pad to comply with the requirement of the said regulation. The writing pad was not all examined. The Clause 2 of the Regulations under Order No. VII reads as follows:

Malpractice Award of Maximum punishment

Matter relevant to the examination being written on any part of the body or on the clothes worn, or in the instruments, wrappings etc,

Shall be debarred from appearing at the subsequent papers of the examinations apart from cancelling the result of the examinations in which he/she had indulged in Malpractice.

3. The said regulation contemplates that the committee is duty bound to judge and examine the answer-scripts with reference to the words written on the writing pad and it is only after such verification of the matter relevant to examination, punishment is contemplated. In the instant case, the show-cause notice dated 12-12-2001 was issued alleging that the petitioner had committed objectable act and the nature of the act committed is that some points are written on the writing pad. Further, the petitioner has averred that he has not committed any objectable act but the show-cause notice does not state whether the writings on the pad are relevant to the answers written in the examination.

4. A counter-affidavit is filed contending that the petitioner is booked in a malpractice case when he was writing the Economic paper with the points connected with the subject on the writing pad. The Chief Superintendent's report also confirmed the same and on that basis, he was booked under malpractice which the candidate has already confessed in his application dated 24-12-2001. The answer script along with the said report was sent to the Controller of Examination for further action. The Malpractices Committee met on 29-12-2001 and the Committee basing on the confession that there were some points on the writing pad which he had written for study but did not wipe out, passed the impugned order. The Committee comprising of academicians decided the punishment as per malpractices norms of Osmania University. It is also stated that after careful verification of the Chief Superintendent's report and explanation submitted by the petitioner in writing the impugned order was passed and accordingly the examination result of the petitioner has been cancelled and as such, the declaration of the result does not arise.

5. Learned Counsel for the petitioner vehemently contended that the committee has not verified the answer script with reference to the words written on the writing pad as per the regulation. Whether the words on the pad are relevant to the matter as per the regulation. The report of the Chief Superintendent has not

been furnished and no opportunity of hearing was given to the petitioner and the disproportionate punishment of preventing the petitioner from writing subsequent papers and cancelling the entire examination and not permitting the petitioner to appear for the supplementary examination are arbitrary and violative of principles of natural justice. Further, the impugned order casts a stigma of malpractice against the petitioner and he loses one precious academic year. Learned Counsel submits that it is case of no evidence and no opportunity was given to the petitioner and non-furnishing of the report of Chief Superintendent vitiates the impugned proceedings inasmuch as the petitioner has not been given an opportunity of hearing and the answer script was not compared with the material on the writing pad and the committee predetermined and prejudged the issue without applying their mind to the facts of the case objectively. The Superintendent did not verify and compare the answer-script with that of the words written on the writing pad in the presence of the petitioner and therefore, it amounts to violating the principles of natural justice and the entire action is unfair and unjust as the Committee cancelled the examination which is unwarranted.

6. Learned Counsel relied upon the judgment of the Supreme Court in *Rajesh Kumar v. Institute of Engineers (India)* AIR 1998 SC 5. That is a case where the result of examination of the students was cancelled on the ground that there was similarity in answers. The Institute sent notices to the candidates seeking explanation on the allegation of copying and malpractices therein and the examiner evaluating the answer books reported that 13 examinees resorted to copying inasmuch as their answers to some questions were exactly the same and on that basis, it was thought that the examinees had adopted unfair means. The Institute rejected the plea of students about similarity in answers and the sitting arrangements made copying impossible. Ultimately, the result of examination of the year 1990 was cancelled and students therein were debarred from appearing in the two immediately following examinations for adopting unfair means and malpractices. The Apex Court set aside the punishment and observed as follows:

"The text of a book as the common source for cramming established no connection. That per se cannot be evidence of any conspiracy between the crammers to adopt unfair means in the examination unless there be material to show that there was copying of the answer books, descended from the answer book of one of the candidates or directly from the book leading to the copying by others."

7. Learned Counsel for the petitioner also relied upon the decisions of the Gujarat High Court in *Sunny Dharampalsingh Chaudhary Vs. Gujarat Secondary Education Board and Another*, wherein it was held as follows:

"In the instant case so far as the question of prejudice is concerned, it may be pointed out in the first instance that the very fact that the hearing was not afforded by the committee as a whole itself is a serious prejudice for the simple reason that in such cases one of the members who hears the matter may take

his own independent decision whereas when all the members of the Committee hear the matter jointly and take a decision, such decision may be different. To make it more clear any one office or authority himself may come to a different conclusion whereas the case in which the decision is taken by a body after hearing the matter with application of mind and meeting of minds of all the members of the committee such decision may be different and therefore it cannot be said in the facts of the present case that the denial of hearing by all the members of the committee and the hearing by only one of the members of the committee has caused no prejudice to the petitioners. Besides this it has also been the case of the petitioners that the report which was made by the class supervisor was not made available to the examinees nor the report of the person who said to have detected the candidate was given nor the report of the building conductor was given and thus the decision which has been taken against the petitioners is based on undisclosed material which was not supplied to them whereas such items do find place in the instructions to which reference has already been made in the earlier part of this order in para 8 on which reliance has been placed by the Board itself. I therefore, find that it is a case in which the reasonable opportunity has not been granted. Merely because all the members have placed their signatures on the cover of the case file would show that the entire committee had heard the delinquent examinee. The petitioners' specific allegations in this regard as have been quoted in the earlier part of this order have not been controverted on behalf of the Board....."

8. The Supreme Court in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, , observed that the effect of the decision of the committee may in an extreme case blast the career of a young student for life and in any case will put a serious stigma on the examinee concerned which may damage him in later life. The nature of misconduct which the committee has to find in such cases is of a serious nature, for example, impersonation commission of fraud, and perjury and the committee's decision in matters of such seriousness may even lead in some cases to the prosecution of the examinee in Courts.

9. In Y. Nalini Kanth Vs. Controller of Examination, Nampally, Hyderabad and another, , this Court while referring to decisions in A. Ramakoteswara Rao v. The Vice-Chancellor, Nagarjuna University Guntur, 1990 (3) ALT 1, S.L. Kapoor Vs. Jagmohan and Others, and Vibhu Kapoor Vs. Council of Indian School Certificate Examination and Another, , held that cancelling the examination and debarring the candidate from appearing in future examinations for the malpractice of copying forbidden material in the answer sheet without issuing a show-cause notice to the candidate is bad.

10. Learned Standing Counsel for the University contended that the petitioner himself admitted writing of the pad, which is prohibited as per the regulations and hence, this Court cannot interfere under Article 226 of the Constitution of India. Learned Standing Counsel relied on the decision of the Supreme Court in

Central Board of Secondary Education Vs. Vineeta Mahajan (Ms) and Another, , wherein it was held as follows:

"The sine qua non for the misconduct under the rules is the recovery of the incriminating material from the possession of the candidate. Once the candidate is found to be in possession of papers relevant to the examination the requirement of the rule is satisfied and there is no escape from the conclusion that the candidate has used unfair means at the examination. The rule does not make any distinction between bonafide or mala fide possession of the incriminating material. .The reasoning, that the candidate having not used the material inspite of the opportunity available to her -the possession alone would not attract the provisions of the rule is not borne out from the plain language of the rule.....The very fact that the candidate took the papers relevant to the examination in the paper concerned and was found to be in possession of the same by the invigilator in the examination hall is sufficient to prove the charge of using unfair means by her in the examination under the rule."

11. I have perused the impugned order as well as the regulations. In the instant case, the Clause 2 of Regulation under Ordinance VII - Conduct of Examination Part-V mandates the authority to find out the relevancy of the material and verifying the answer script. In view of the above decisions and having regard to the facts and circumstances of the case, the answer script should have been compared with the words written on the writing pad and without such verification and comparison and non-furnishing of report of Chief Superintendent and also not affording opportunity of hearing to the petitioner, vitiates the impugned action.

12. The impugned order, in my considered view, is bad in law and accordingly it is set aside. The University is directed to evaluate the answer-scripts of the petitioners and declare the result and also allow him to appear for the remaining papers in the supplementary examination to be held.

13. Accordingly, the writ petition is allowed, but in the circumstances without costs.