
(2013) 10 AHC CK 0211

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 53533 of 2013

Vijay Kumar

APPELLANT

Vs

Bundelkhand University and Others

RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : (2013) 10 ADJ 487 : (2014) 1 ESC 16

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Advocate : Rakesh Kumar Shukla, for the Appellant; Neeraj Tiwari and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The petitioner, who had appeared at the B.A. L.L.B. third semester examination, has filed this petition for quashing the order dated 16th August, 2013 passed by the respondent-Bundelkhand University, Jhansi by which the third semester examination result of the petitioner has been cancelled and he has been debarred from appearing in the next semester examination. On 27th September, 2013, time was given to the learned counsel appearing for the respondent-University to produce the records. Learned counsel appearing for the respondent-University has produced the records. It is seen from the records that on 21st January, 2013 when the petitioner was appearing in the Political Science third paper, a handwritten photo-stat copy was found in his possession by the Flying Squad and so a show-cause notice dated 2nd July, 2013 was issued to the petitioner to which he submitted a detailed reply stating that the photo-stat copy did not belong to him and nor was it in his handwriting. The records also show that the examiner who examined the unauthorised material and the answer book had reported that the unauthorised material did not only relate to the question paper but the petitioner had also utilised it in his answers. It is in view of the aforesaid report that the Examinations Committee constituted to deal with and decide cases relating to use of unfair means decided to cancel the third semester

examination result of the petitioner and also debarred him from appearing in the next semester examination.

2. Learned counsel for the petitioner has submitted that the decision taken by the Examinations Committee deserves to be set aside as the unauthorised material was not recovered from the possession of the petitioner and nor is it in his handwriting.

3. In order to examine the connection advanced by learned counsel for the petitioner reference needs to be made to the decision of the Supreme Court in *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, . This was the case where the candidate was charged with use of unfair means as he had given wrong answers in precisely the same form as the answers that had been given by another candidate. The High Court found that the conclusion of the Enquiry Committee that the respondent had copied either from the answer book of another candidate or from another source was not supported by any evidence. The Supreme Court, however, reversed the decision of the High Court holding that the question before the Enquiry Committee had to be decided in the light of the nature of the incorrect answers and that is what the Enquiry Committee had done. It was also observed:

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 Tribunals 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.

(emphasis supplied)

4. The aforesaid decision in Bagleshwar Prasad (supra) was relied upon by the Full Bench of this Court in Triambak Pati Tripathi Vs. The Board of High School and Intermediate Education, U.P., Allahabad, . This was a case where petitioner had found out the square-root of 45.5625 as 6.75 without doing any rough work or calculation and in respect of question No. 2, the solution given by the petitioner showed that the first four or five lines were unnecessary and redundant. These superfluous lines tallied with the solution given by six other candidates. The Full Bench observed that the Examinations Committee could in such circumstances reasonably come to the conclusion that the petitioner was guilty of use of unfair means and it could not be said that there was no material on the record to substantiate that the petitioner had used unfair means at the examination.

5. The aforesaid decision of the Supreme Court in Bagleshwar Prasad (supra) and the Full Bench decision of this Court in Triambak Pati Tripathi (supra) were relied upon and followed in another Full Bench decision of this Court in Ghazanfar Rashid Vs. Secretary, Board of High School and Intermediate Education, U.P., Allahabad and Others, and it was observed:

.....Direct evidence is available in some cases but in a large number of cases direct evidence is not available. In that situation, the Examinations Committee has of necessity to rely on circumstantial evidence which may include the answer given by the examinee, the report of the Superintendent of the centre, the invigilator and the report of the experts and other attending circumstances. The Screening Committee constituted by the Examinations Committee consists of experts in the subject concerned who are possessed of technical knowledge and experience, and they are in a better position to consider the explanation of an examinee and to decide the question of use of unfair means. If the Examinations Committee, relying on the report of the Screening Committee as well as on the answers of an examinee bona fide arrives at the conclusion that the examinee used unfair means in answering the questions, it is not open to the High Court to interfere with that decision merely because the High Court may take a different view on re-assessment of those circumstances. It is the function of the appellate Court to take a different view of the evidence and not the function of a supervisory Court to interfere with the order on the ground of a different possible view.....

These principles are well-settled but the real difficulty arises in their application to the particular facts of a case. While applying these principles it must be borne in mind that in case of no evidence the order would be vitiated only when there is not a single piece of evidence direct or indirect, oral or documentary, or even circumstantial evidence based on probabilities to sustain the decision of the authority concerned, but if there is some evidence of circumstantial nature, which may even include probabilities, it would not be a case of no evidence. Inadequacy of evidence does not fall within the principle of no evidence. If there be any evidence, howsoever weak it may be in its probative value, it will not be a

case of no evidence and the High Court has no jurisdiction to interfere with the finding.....

As discussed earlier, it is not open to this Court to interfere with the order of the Examinations Committee on the ground that another view could be taken on the material on record. In answering questions relating to mathematics and Physics or Chemistry if necessary answer is arrived at by an examinee though wrong working it would be reasonably possible for the Examinations Committee to draw an inference that the examinee had used unfair means. Even if it is possible that the examinee may have omitted the necessary steps due to inadvertence or certain reasons, it is for the Examinations Committee to consider that explanation and it is not open to this Court to reassess the circumstances and to interfere with the decision of the Examinations Committee.

(emphasis supplied)

6. In Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, , the Supreme Court approved the aforesaid Full Bench decision of this Court in Ghazanfar Rashid (supra).

7. In Controller of Examinations and Others Vs. G.S. Sunder and Another, , the Supreme Court examined the case of a student who had been charged of using unfair means at the examination as he had interchanged his Roll No. with that of another student. The High Court came to the conclusion that the charge of malpractice was unbelievable and in any event could not have been committed without connivance of the Examiner or the Invigilator. The Supreme Court reversed the aforesaid findings of the High Court holding that in matters of enforcement of discipline, the Court must be very slow in interference and the authorities whose duty is to conduct the examination fairly and properly know best how to deal with situations and it is not possible to import fine principles of law and weigh the same in golden scales. Such unhealthy practices of copying should be rooted out so that innocent and intelligent students are not affected. The Supreme Court further observed that when the University takes action against the students, it cannot be blamed merely because that malpractice could not have been committed without the connivance of the Examiner or the Invigilators.

8. It is in the light of the aforesaid observations that the contention of learned counsel for the petitioners has to be examined.

9. The Courts while deciding cases relating to use of unfair means have repeatedly held that a decision relating to use of unfair means can be taken not only on the basis of direct evidence but also on probabilities and circumstantial evidence and there is no scope for importing the principles of criminal trial while considering the probative values of probabilities and circumstantial evidence and the Committee is not bound by the technical rules of evidence and procedure as are applicable to Courts. It has also been observed that the High Court does not sit in appeal over the decisions taken in such matters by expert bodies as its

jurisdiction is limited to finding out whether the order was supported by any evidence and whether opportunity had been given to the candidates. However, it has been emphasised that such a conclusion that the order is not supported by any evidence must be arrived at only after considering whether probability and circumstantial evidence did not justify such a conclusion.

10. It is seen that the examiner has made a categorical statement that the unauthorised material was used by the petitioner in answering the question paper. The Examinations Committee of the University had also taken the decision in the light of the report submitted by the examiner. The submission advanced by learned counsel for the petitioners is that as the unauthorised material is not in the handwriting of the petitioner and as it was not recovered from his possession, he has not resorted to use of unfair means.

11. Keeping in mind the aforesaid principles and in view of the specific report submitted by the examiner, it is not possible to accept the contention advanced by learned counsel for the petitioner that he had not resorted to use of unfair means as the unauthorised material is not in his writing and nor was it recovered from his possession.

12. In such circumstances, it is not possible to grant any relief to the petitioner. The writ petition is, accordingly, dismissed.