

Narendra Nath Misra and ors. Vs. High School and Intermediate Education Board, Allahabad and anr.

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Court : Allahabad

Decided On : Nov-20-1981

Reported in : AIR1982All123

Judge : Yashoda Nandan and ;S.J. Hyder, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petn. No. 6692 of 1981

Appellant : Narendra Nath Misra and ors.

Respondent : High School and Intermediate Education Board, Allahabad and anr.

Advocate for Pet/Ap. : R.K. Dwivedi, Adv.

Disposition : Petition dismissed

Judgement :

S.J. Hyder, J.

1. This writ petition has been filed by four examinees who appeared at the High School Examination held in the year 1980 from the Intermediate College, Shukulpur in the district of Allahabad, Their result was initially withheld by the

Board of High School and Intermediate Education and subsequently by an Order dated January 31, 1981 the Board cancelled their examination on the ground that they had used unfair means while answering the first paper in the discipline of physics.

2. The writ petition, in the first instance, was argued before us on behalf of the petitioners on Oct., 13, 1981. The petition was again taken up as a part heard case on Oct. 14, 1981 and on the second date of hearing two supplementary affidavits were filed on behalf of the petitioners in support of their writ petition.

3. In the writ petition the order passed by the Board of High School and Intermediate Education referred to above was impugned only on the ground that it was based on no evidence, By means of the supplementary affidavits certain other grounds were taken to challenge the validity of the order dated January 31, 1981. In this judgment we shall deal with all the grounds taken by the petitioner from time to time.

4. The charge against the petitioners was that they had answered question No. 4 Kha and 4 ga, 6 dha, 6 ka, and 8 ga in identical manner along with three other students who appeared at the same centre. It was clarified that the answers to some of the questions contained identical mistakes. The answer to another question was arrived at without doing any calculation which was beyond the capacity of any student appearing at the High School Examination.

5. A written charge-sheet was served on all the petitioners and they were required to appear before a Spot Enquiry Committee, The committee met at the premises of Shukulpur Intermediate College on September 29, 1980, It asked the petitioners to explain the charges framed against them. All the petitioners gave almost identical answers and denied having used unfair means at the examination, Petitioner I further stated that he was feeling confused. He did not, however, ask for the adjournment of the enquiry,

6. The Spot Enquiry Committee gave a finding which was adverse to the petitioners. The said findings were accepted by the Board of High School and Intermediate Education which passed the impugned order accordingly. For the

sake of facility we asked the Standing Counsel to produce the answer books and connected papers relating to the enquiry for our perusal at the time of the admission of the writ petition, In compliance with our order the Standing Counsel produced the charge-sheets framed against the petitioner and the proceedings of the Spot Enquiry Committee as well as answer books of the petitioners and other connected papers.

7. Since we have heard the learned counsel for the petitioners at length we propose to decide this writ petition on merits.

8. Learned counsel first submitted that the impugned decision is not based on any evidence. He contended that punishment of cancelling the examination of the students for using unfair means entails serious consequences for the students concerned and this Court has jurisdiction under Article 226 of the Constitution to quash the impugned order on this ground. He referred us to a large number of decisions in support of his contention,

9. In AIR 1962 SC 1110 Board of High School and Intermediate Education v. Ghanshyam Das Gupta, Wanchoo J, speaking for the Court observed (at p. 1115):--

'We thus see that the Committee can only carry out its duties under Rule 1 (1), by judging the materials, placed before it. It is true that there is no lis in the present case, in the sense that there are not two contesting parties before the Committee and the matter rests between the Committee and the examinee; at the same time considering that materials will have to be placed before the Committee to enable it to decide whether action should be taken under Rule 1(1) it seems to us only fair that the examinee against whom the Committee is proceeding should also be heard. 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 under Rule 1(1) in some 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. Considering therefore the

serious effects following the decision of the Committee and the serious nature of the misconduct which may be found in some cases under Rule 1 (1), it seems to us that the Committee must be held to act judicially in circumstances as these. Though therefore there is nothing express one way or the other in the Act or regulations casting a duty on the Committee to act judicially, the manner of the disposal, based as it must be on material before it, and the serious effects of the decision to the conclusion that a duty is cast on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees, before it can take any action in the exercise of its power under Rule 1 (1). We are therefore of opinion that the Committee when it exercises its powers under Rule 1 (1) is acting quasi judicially and the principles of natural justice which require that the other party, (namely, the examinee in this case) must be heard, will apply to the proceedings before the Committee. This view was taken by the Calcutta High Court in *Dipa Pal v. University of Calcutta*, AIR 1952 Cal 594 and *B. C. Das Gupta v. Bijoyranjan Rakshit*, AIR 1953 Cal 212 in similar circumstances and is in our opinion correct.'

10. In the case of *Ghanshyam Das* (AIR 1962 SC 1110) (*supra*) the result of the petitioners in that case had been cancelled for using unfair means without giving any opportunity of showing cause against the action proposed to be taken against them. It was in this context that the Supreme Court arrived at the conclusion that the decision taken by the Board of High School and Intermediate Education against the petitioner in that case was bad and was liable to be quashed.

11. The question of legality of the action taken by the Board of High School and Intermediate Education against certain examinees on the ground of their using unfair means again came up for consideration before that Court in the AIR 1966 SC 875 *Board of High School and Intermediate Education v. Bagleshwar Prasad*. In that case a charge-sheet was served on the petitioner of that case by the Spot Enquiry Committee of the Board and he was given an opportunity to submit his explanation to the charges. The charge was based on the fact that in Hindi third paper set at the said examination the petitioner of that case had given written answers to question No. 4 in precisely the same form in which the answers had been given by another candidate. In his explanation the petitioner of that case

admitted that the two answers appeared to be identical but he denied that he had used any unfair means. The Spot Enquiry Committee was not satisfied by the explanation given by the petitioner in that case and came to the conclusion that he had used unfair means. The report of the Spot Enquiry Committee was accepted by the Board and action was taken by the Board in that case cancelling his result. In writ petition preferred before this Court the petitioner inter alia urged that action taken against him was based on no evidence, This Court accepted the contention advanced on behalf of the petitioner and quashed the order cancelling the examination of the petitioner in that case. Feeling itself aggrieved by the judgment the Board went in appeal to the Supreme Court, The appeal was allowed Gajendragadkar, J speaking for the Court said (at p. 878):--

'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 decision of domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities under Article 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. In the present case, no animus is suggested and no mala fides have been pleaded, The enquiry has been fair and the respondent has had an opportunity of making his defence, That being so, we think the High Court was not justified in interfering with the order passed against the respondent'.

12. In the case of 1972 All LJ 512, (AIR 1973 All 1) Triambak Pati Tripathi v. Board of High School and Intermediate Education, the matter was considered by a Full Bench of this Court and it was reiterated that proceedings for cancellation of result of student accused of unfair means were of a quasi judicial nature and were governed by the principles of natural justice. It was further held that the only rights which an examinee accused of using unfair means were that he should be given due notice of the charge or charges against him on the basis of which action was proposed to be taken so that he should have an opportunity to make representation against the accusations levelled against him. It was also held that the Authority conducting proceedings must not be biased and should act in good faith. In the case of AIR 1979 All 209 (FB) Ghazanfar Rashid v. Secretary, Board of High School and Intermediate Education the petitioner of the case appeared at the Intermediate Examination held in the year 1973 from a centre in the district of Banda. A complaint was received by the Board that the examinees had used unfair means on a large scale while answering questions for the Intermediate Examination. The Board appointed a Screening Committee of experts to ascertain the correctness of the allegation. The Screening Committee reported that a large number of students including petitioner of that case were guilty of using unfair means. The Board then appointed a Spot Enquiry Committee and served a charge-sheet against the petitioner for obtaining his explanation. In the charge-sheet it was alleged that while answering question No. 1 of Chemistry Second paper the petitioner in that case had used unfair means and in support of the charge it was alleged that the petitioner had arrived at the correct answers without going through the requisite working either in rough or in the answer itself which was not possible. According to the charge-sheet the conclusion was irresistible that Ghazanfar Rashid had answered the questions with the help of some outside agency. The petitioner in that case denied the charges and stated that the

arithmetical steps involved in the question were so simple that the processes involved in arriving at the answers were carried out in his mind. He denied that he had obtained any extraneous help, directly or indirectly through any source, The spot Enquiry Committee found the explanation given by the petitioner to be unsustainable and recommended disciplinary action against the petitioner of that case. The Board accordingly passed an order cancelling petitioner's result for the Intermediate Examination for the year 1973, the writ petition was filed challenging the legality of the order passed against him and it was urged on his behalf that the decision of the Board was based on suspicion and there was no evidence to sustain the charge, Reliance was placed on his behalf on the case of Prabhat Kumar v. Board of High School and Intermediate Examination 1971 All LJ 1391. The Bench before which the writ petition came up for hearing felt some doubt about the correctness of the decision in the case of Prabhat Kumar (supra) and referred the case for decision to a Full Bench. The Full Bench after a review of a large number of decisions laid down the law in the following words (at p. 212 of AIR 1979 All) :--

'If the examinations committee relying on the report of the Screening Committee as well as on the answers of examinee bona fide arrives at the conclusion that the examinee used unfair means in answering 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 reassessment 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. While it is open to the High Court to interfere with the order of a quasi Judicial authority if it is not supported by any evidence or if the order is passed in contravention of the statutory provisions of law or in violation of the principles of natural justice, but the Court has no jurisdiction to interfere with the order merely on the ground that the evidence available on record is insufficient or inadequate or on the ground that a different view could possibly be taken on the evidence available on the record'.

13. The passage extracted from the decision of the Full Bench in Ghazanfar Rashid's case (AIR 1979 All 209) has been further elaborated in the judgment of

that case in the following words :--

'If the examination committee relying on the probabilities and circumstantial evidence and intrinsic evidence available in the answer book of the examinee comes to the conclusion that unfair means was used it is outside the jurisdiction of the High Court to reappraise and reassess the evidentiary value of those circumstances to take a different view'.

14. From the above discussion the conclusions hereinafter stated are inescapable and admit of no doubt. The proceedings undertaken by a examining body against a student on the ground that he was guilty of using unfair means at the examination are of a quasi judicial nature and as such are governed by the principles of natural justice. All that is required by the rules of natural justice is that no man should be judged without hearing and that every Judge must be free from bias, The right to be heard necessarily implies that a person against whom action is proposed to be taken must be apprised of the facts on the basis of which action is proposed to be taken against him and he must be given an opportunity to put forward his own version, The High Court may interfere with the decision taken by an examining body if it is based on no evidence, If some evidence is available to sustain the action taken against an erring student by an examining body the High Court will not interfere with the decision taken by it, even if it is of the view that a different conclusion was possible from the facts found by the examining body, In other words the jurisdiction of the High Court under Article 226 is only of a supervisory nature and it does not act as an appellate authority while exercising its extraordinary powers under Article 226 of the Constitution.

15. In the instant case the examination committee has taken the view that answer to one of the questions had been arrived at by the petitioners without doing any calculation and that the other questions mentioned in the charge-sheet contained mistake which were common to the petitioner and some other students. We have examined the relevant answer books and we find that there is evidence to sustain the findings recorded by the examination committee of the Board.

16. Learned counsel, However, contended that the answer to the question which contained no calculation could have been arrived at by working out the

calculations by a mental process. He further submitted that the mistakes in other questions were only accidental and did not necessarily lead to the conclusion that common source was used by the petitioner and other students concerned while answering the questions. In support of his submissions he has relied on a Division Bench case of this Court in the case of (1981) 7 All LR 511 : (1981 All LJ 565) Anand Kumar Agarwal v. Registrar, Agra University, Agra.

17. We do not feel impressed by the submission made by the learned counsel. The examination committee consisted of experts and it has given a categorical opinion that the bare answer given to one of the questions involving calculation, could not have been answered by a High School student without doing calculations, We are further satisfied upon an examination of the answer books that the answers to other questions referred to in the charge-sheet did not (sic) contain common mistakes as held by the Board. In fact the submission of the learned counsel outlined above is in the teeth of the Full Bench in the case of Ghazanfar Rashid (AIR 1979 All 209) (supra). The facts of that case and the instant case are identical. It cannot be held that the decision of the Board made against the petitioners was not based on any evidence. It is not possible for us to take a different view of the evidence on which the examination committee of the Board has acted. No doubt the Division Bench case of this Court reported in (1981) 7 ALR 511 lends some colour to the submission made by the learned counsel, In our opinion the said case in so far as it runs counter to the decision rendered by the Full Bench in Ghazanfar Rashid's case (supra) does not lay down good law,

18. We Have already stated that the petition was argued before us on 13th October 1981 and again on October 14, 1981, On the last date of hearing two supplementary affidavits were filed on behalf of the petitioners in which additional grounds were urged against the validity of the order of the Board dated January 31, 1981. As will appear from what is stated later in this judgment all the grounds urged by means of the supplementary affidavits raise mixed questions of fact and law, We are unable to judge why the facts stated in the supplementary affidavits were not raised in the writ petition when it was originally filed, The facts stated in the supplementary affidavits must have been known to the petitioners when they

filed the writ petition. They have offered no explanation in the supplementary affidavits as to why these facts were not disclosed earlier. In this connection it would also be relevant to state that on Oct. 13, 1981 the Standing Counsel produced before us four charge-sheets, one relating to each of the petitioners, for our perusal and the answers given to the said charges. We have also stated earlier that all the petitioners gave almost identical answers to the charges framed against them. Only petitioner No. 1 had also stated that he was feeling confused. After perusing all the answers given by the petitioners, all of which were written on a single sheet of paper we returned the same to the Bench Secretary for being returned to the Standing Counsel, When the case was taken up once again for further hearing on the next date of the document containing the charge-sheet and answers given by petitioner No. 1 was missing; and this information was conveyed to us by the Standing Counsel, We are unable to say as to what happened to the charge-sheet and the answer given by petitioner No. 1 after the same had been returned by us.

19. Be that as it may the very fact that the petitioners have given out additional facts in the supplementary affidavits, which could have been stated by them in the writ petition, makes the correctness of the averments made in the supplementary affidavits suspect and difficult to be relied upon. Anyhow we will examine additional contentions raised on behalf of the petitioners.

20. One of the questions urged on the basis of one of the supplementary affidavits is that petitioner No. 1 had always been a meritorious student on account of which the Examiner and the members of the Spot Enquiry Committee were biased against him, In the supplementary affidavit the names of the Examiner or of the members of the Spot Enquiry Committee have not been disclosed. In our opinion it is puerile to urge that the Examiner or members of the Spot Enquiry Committee would be biased against petitioner No. 1 only because he was a meritorious student. We invited the attention of the learned counsel for the petitioners about the omission of the names of the Examiner and the members of the Spot Enquiry Committee from the supplementary affidavits and even asked him to disclose their names. He pleaded his inability to do so. In view of these facts the argument founded on the principle of bias is only to be stated in order to be rejected.

21. It has next been stated in the supplementary affidavit, and was pressed upon us, that the Superintendent of the Examinations at the Shukulpur Intermediate College was not present at the time of the enquiry. It is also stated that the Invigilators who conducted the invigilation in the examination were not examined by the Spot Enquiry Committee, This submission is again without substance and cannot be accepted. The case against the petitioners was based on the report of the Examiner and was supported by intrinsic evidence furnished by the answer books. The presence of the Superintendent Examinations and of the Invigilators at the time of the enquiry was not material and no prejudice can be said to have been caused to the petitioners on account of the absence of the Superintendent of Examinations and of the Invigilators at the time of the enquiry.

22. It is yet next urged on the basis of the supplementary affidavits that the answer books of the petitioners were not shown to them at the time of the enquiry. The facts on which this argument is based is belied by the charge-sheet and the answers given by the petitioners in their replies to the same, The petitioners as already stated, have categorically stated in their replies that answer to one of the questions was given by them on the basis of working out the different steps involved in their mind. They have also admitted that the answers given by them to the other set of questions contained common mistakes but pleaded that they were only accidental. Answers furnished by the petitioner thus indicate that the answer books pertaining to each of the petitioner and other students who had given similar answers were with the Spot Enquiry Committee at the time of enquiry.

23. On behalf of the petitioner 1 it has also been urged that as he was feeling confused the hearing should have been postponed to another date by the Spot Enquiry Committee. We do not feel impressed by the argument. It was for petitioner 1 to have requested the Spot Enquiry Committee to postpone the enquiry to another date. He did not make any such request. The Spot Enquiry Committee was under no obligation to act in the matter suo motu. It was only natural for the petitioner to feel nervous when faced with serious charges of using unfair means at the examination.

24. It has finally been contended that the petitioners were forced to write the different answers to the charges by the Spot Enquiry Committee. The averments made in the supplementary affidavits to this effect are wholly unbelievable. If there had been any truth in this statement the petitioners would not have withheld this fact from the writ petition. There was no other material on record to sustain the ipse dixit of the petitioners on this point.

25. The result is that this writ petition fails and is hereby dismissed. There shall, however, be no order as to costs.

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