

University of Delhi Vs. Vandana Gupta

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Court : Delhi

Decided On : Oct-16-1979

Reported in : ILR1979Delhi716

Judge : Rajindar Sachar and; Harish Chandra, JJ.

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

Appeal No. : Letter Patent Appeal No. 72 of 1979

Appellant : University of Delhi

Respondent : Vandana Gupta

Advocate for Pet/Ap. : K.K. Venugopal,; V.P. Chaudhary and; A.B. Saharia, Advs

Judgement :

Rajindar Sachar, J.

(1) This is a Letters Patent Appeal by the University against the order of the learned single Judge by which he allowed the Writ Petition of the respondent and quashed the impugned order, dated 26-10-1977 by which the respondent had been disqualified for passing the B.A. (Pass) Part II examination held in April, 1977 and had also been debarred from appearing in any examination of the University for a further period of one academic year, i.e., 1977-78.

(2) Ordinance Xa framed by the University deals with disorderly conduct and use of unfair means in the examination and the procedure to deal with such cases. Clause I(d) defines the use of dishonest or unfair means in the examination to include:

(i) assisting in any manner whatsoever any other candidate in answering the question paper during the course of the examination; (ii) taking assistance from any other candidate or any other person or from any book, paper, notes or other material in answering the question paper during the course of the examination; (iii) carrying into the examination room any book, paper, notes, or other material whatsoever likely to be used directly or indirectly by the candidate in connection with the examination ; (iv) smuggling in an answer book or a continuation sheet; (v) taking out or arranging to send out an answer book or its any paper or a continuation sheet; (vi) replacing or getting replaced an answer book or its any page or continuation sheet during or after the examination; (vii) getting impersonated by any person in the examination; (viii) deliberately disclosing ones' identity or making any distinctive mark in the answer book for that purpose ; (ix) communicating with or talking to any other candidate or unauthorised person in or around the examination room during the course of the examination; (x) communicating or attempting to communicate directly or through a relative, guardian or friend with an examiner with the object of influencing him in the award of marks ;

Clause 2 prohibits the use of such dishonest or unfair means. Clause 6 provides for the constitution of an Examination Disciplinary Committee, (E.D.C. for short). Clause 9 provides that if Edc is satisfied that the candidate is guilty of using dishonest or unfair means it shall recommend to the Executive Council the punishment that may be imposed on the candidate. Clause 10 provides for the Executive Council after considering the report of the Edc, to take such action against the candidate as it may deem fit.

(3) The respondent took B.A. (Pass) Part II examination in April, 1977. One of her subjects was also English (Paper II). Her Roll No. was 28031 and the Roll Numbers of the other two students of the same college were 28032 and 28033. The seating plan showed that the Roll Numbers 28032 and 28033 were seated in the same row behind the respondent. It appears that the examiner of the paper part II reported to the University that there were similarities in the answers to question I (a), (c) & (f) of respondent No. 1 (Roll No. 28031) and those of other two candidates (Roll Nos. 28032 and 28033). On that basis the respondent was asked to show cause by the University by its letter of 5-9-1977 informing her that the examiner had reported that in paper II English of B.A. (Pass) Part II she had resorted to the use of unfair means i.e. taking assistance in answering question I (a), (c), (f) from Roll No. 28032 and 28033. The respondent denied the allegations and also appeared before the Examination Disciplinary Committee on 10-9-1977. At that interview Edc took the view that the allegations communicated to respondent was that she had taken assistance in answering question from Roll No. 28032 and 28033 but that there could be two other possible ways in which the candidate might have resorted to the use of unfair means firstly that there could be some common unauthorised material in circulation amongst the candidates and the other that the respondent permitted the girl behind her to copy the question from her answer book and the second girl did likewise. They, therefore, put these possibilities to the respondent and also confronted her with the close similarities between the answers given to these three questions by her and the other two candidates. The committee after consideration of her replies came to the conclusion that one of the methods i.e., either there being some unauthorised material in circulation amongst the candidates or that the respondent had permitted the other girls to copy from her answer sheet was resorted to, and concluded that this could not have been done without her connivance. They, therefore, recommended that she be disqualified from passing the examination held in April, 1977 and also appearing in the examination for academic year 1977-78. The matter was then referred to the Executive Council who on 18-10-1977 accepted the recommendation of the committee and made the impugned order. The respondent's representation under clause 11 of the Ordinance X-A for review of her case was rejected. Thereafter the respondent filed a Writ Petition in this court.

(4) Challenge in the Writ Petition was made on various grounds namely that no reasonable opportunity was given to the respondent and that there was no material from which any guilt could be proved against her; also that the order of the Executive Council finding her guilty was based on no evidence. All these grounds have been negated by learned single Judge. The respondent however, succeeded before the learned single Judge who has held that the charge of taking or receiving assistance based on the report of the examiner of the answer books subsequent to the examination is outside the Ordinance. He has also held that the Ordinance excludes, by implication, charge of an act or omission which was not detected during the examination.

(5) The University has come up in appeal to this court. Mr. Venugopal, the learned Additional Solicitor General and V. P. Choudhary, who appeared for the University clarified that the main purpose for filing the appeal was because of the finding of the learned single Judge on a question of law by which the University had been held not to have any power to proceed against a candidate if the allegation is that he or she has given or received assistance and this fact comes to the notice of the Committee subsequent to the examination, because this finding if upheld will have very serious consequences on the purity of the examinations and the University may not have taken the step of filing appeal if it was only a question of the case of an individual or two. We appreciate this can do which will have relevance to the ultimate order to be passed by us.

(6) Clause 2 provides that no candidate shall make use of any dishonest or unfair means or indulge in disorderly conduct in the examination. Stopping short it cannot be disputed that giving or faking assistance in

any manner or smuggling or replacing answer books by a candidate would be use of unfair means, which if found proved would result in the student being disqualified and debarred from appearing in future examination as provided by clause 3 of Ordinance X-A. But the learned Judge has held that the definition of unfair means given in sub-clause (d) of clause (1) of Ordinance X-A covers cases in which detection may be made after the examination has taken place is clear; more especially by reference to sub-clause (vi), (viii) and (x). Sub- Clause (vi) covers the cases where replacement of an answer book may take place both during or after the examination. Sub-clause (viii) also provides for a situation where identity is to be known after the examination has taken place. Sub-clause (10) specifically covers a situation where the examiner therein is obviously one who will never be in the examination hall because he is an examiner who has to award the marks. He will normally be approached after the examination has taken place. The report that he will send to the University, will also be after the examination has taken place. Now if the interpretation given by the learned single Judge that the charge of taking and receiving the assistance based on the report of the examination of the answer books subsequent to the examination appears to be outside the ordinance was to be accepted, the result would be that sub-clause (x) by its very nature could never be resorted to and will thus remain a still born provision. The same result will follow with respect to sub-clauses (vi) and (viii), where unfair means are resorted to after the examination. It is well settled rule that Parliament cannot be attributed an intention which makes any provision otiose and superfluous vide I.L.R. 1974(1) Del 311. It would be strange and almost absurd that the authorities framing Ordinance X-A (l)(d) should have recognised a particular kind of unfair means which can only take place subsequent to the actual examination and outside the examination hall, and yet should have provided no machinery to punish it. This would be attributing illogicality and absurdity in the framing of the Ordinance which is against the very fundamental basis of interpretation of statutes. It is well settled that if there are two different interpretations of the words in an Act the court will adopt that which is just, reasonable and sensible rather than that which is none of those things. Where there are two meanings each adequately satisfying the meaning of a statute and great harshness is produced by one of them, it has a legitimate influence in inclining the mind to the other for it is more probable that the legislature has used the word in that sense which least offends our sense of justice. If the inconvenience is not only great, but such as would lead to absurdity, by reading an enactment in its ordinary sense, whereas if read it in a manner in which it is possible to read though not its ordinary sense, there would not be any inconvenience at all, there would be reason not to read it according to its ordinary grammatical meaning vide Craies on Statute Law 17th Edition page 86-87, (Foot Note 45-46). That the Ordinance making authority contemplated taking action against a candidate even if detection is made much long after the examination has taken place finds support from clause 13 of Ordinance X-A which provides that where within four months of the publication of the result, it is brought to the notice of the Controller of Examinations that a candidate was guilty of the use of dishonest or unfair means at the examination in respect of which his result was declared, the provisions of the Ordinance shall apply and any penalty including the penalty of cancellation of the result can be awarded. Clause 13 therefore clearly spells out that the knowledge on the basis of which action can be taken against a candidate is not restricted to the information being provided by the Superintendent or the invigilator in the examination hall but would be based on information received subsequently to even after the result has been declared. But if the interpretation given by the learned single Judge is to be accepted that no action can be taken on the basis of a charge which was not detected during the examination clause 13 would be a dead letter and useless. provisions. Now one cannot attribute superfluity clause 13 of the Ordinance. It is a good general rule in jurisprudence that one who reads a legal document whether public or private should not be prompt to ascribe without necessity or some sound reason, or impute to its language tautology or superfluity, and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use, vide Craies on Statute Law page 103 (Note 72). It was not disputed that under the Regulations a seating plan of the candidates has to be sent to every examiner. The purpose obviously is that when the examiner examines the answer books and if he has suspicion of copying amongst various candidates he may have the seating plan available with him to assist him to come to a conclusion whether seating arrangement could have facilitated the copying. This also seems to support the contention urged by the Additional Solicitor General, Mr. Venugopal that the ordinance not

only does not rule out taking action on the use of unfair means when it is detected subsequently to the examination but actually covers a situation and fully encompasses the cases where the detection and the use of the unfair means comes to the notice of the University after the examination is over. We find great merit in this contention. We also see no reason as to why the ordinance should have excluded cases where the use of unfair means was detected after the examination had taken place. If this interpretation is given it would give freedom to the candidate in adopting unfair means during the examination and making it a race between the cunningness of the candidates and shift efficiency of invigilating staff. We cannot conceive of any suggestable reason why the university when it was framing detailed provisions to prevent use of unfair means should have limited the power to take action if detection is made in the examination hall and should have excluded it if the defections are subsequent. The learned Judge thought that this omission was deliberate because this would exclude the charge or omission outside the examination hall as by its very nature it would be based on conjecture and surmises. With respect we are unable to appreciate the reasoning. The mere fact that a candidate is detected during the examination hall by the invigilator or the Superintendent does not per se establish that unfair means have been adopted because the same has still to be enquired into by the Edc and executive council. We do not appreciate why when an examiner on going through various answer books is of the opinion that similarity is so great that there must be reasonable probability of copying and use of unfair means, it is less safe to enquire into them when detection is made in the examination hall. An element of uncertainty is accepted by the ordinance whether a report is made when detection is made in the examination hall or report is made subsequently on comparison of the answer books. The learned Judge seemed to have been influenced in his decision by the fact that while suspicion of contravening the provisions of clause 2, in clause 4(a) to challenge or search is enough, clause 4(b) only permits expulsion if officer is of the opinion that student has contravened the Ordinance, and as clause 5 (a) also uses the phraseology 'has contravened', it must necessarily refer to the incident which has been witnessed in pre- sense. The Teamed Judge was conscious that clauses 5(a) and 8(a) did not limit the making of the report only about incident witnessed in presence, but he thought that nevertheless the scope was limited by reading the words 'as the case may be', by referring it to the previous clause 4, which deals with incidents in the presence of reporting officer. With respect we are unable to agree. The words 'as the case may be' in clause 5(a) is only identifying the authorities mentioned therein namely the Superintendent of the Examination Centre or the Examiner of any other officer of the University who may have detected the use of unfair means and who is to report to the Controller of Examination. To limit the instances in which various reporting officers may make a report under clauses 5(a) and 8(a), is to be read a constraint not to be found therein. Suspicion of contravention is enough for search while the opinion for expulsion, a more serious action requires that the officer concerned should be of the opinion that the candidate has contravened. But this phraseology cannot limit the scope of clauses 5(a) and 8(a). Clause 8(a) which provides for the Controller of Examinations to communicate to the candidate in respect of whom a report has been received pursuant to clause 5(a), the nature of allegations against him does not limit that the report should relate only to the detection of use of unfair means in the examination hall. The learned Judge in arriving at this finding had also opined that where the University wishes to provide for a situation of detection outside the examination hall a specific provision is made and has referred to clause 13(b) of the Punjab University Calendar Vol. I which according to him provides for proceeding on a charge of receiving or giving assistance, based on the comparison of answer books. Now clause 13(e) of Punjab University Calendar no doubt talks of proceeding on a charge based on the examination of answer books if it shows that a candidate has received or given help, it does not in terms say that detection must be in the examination hall. therefore it is not understood why sub-clause (i), (ii) and (iii) of assisting or taking assistance from any candidate in any matter or carrying any material in the examination hall does not envisage the taking of assistance which fact is detected on a comparison of answer books. As a matter of fact no regulation either of Punjab or Kurukshetra referred to by the learned Judge talks of detection being limited to the examination hall. Taking or giving assistance is the objectionable part, the means by which it is established can be many, including the one by comparison of answer books or the help derived from a common source of material. Reference to Air 1977 Punjab 421 is of no assistance to the respondent as the bench did not limit the applicability of that provision to detection being made only during the examination.

We feel that as the ordinance does not limit it to those cases where the detection is made during the examination it would not be correct on any basis of sound interpretation to limit the same to the detection only during the examination hours. A crime is nonetheless a crime because it is not detected during the course of its commission. Taking assistance or giving assistance and the use of unfair means is nonetheless a contravention of ordinance and cannot cease to be so because a candidate was clever enough to do it in a manner that it was not detected in the course of examination. We cannot accept an interpretation which will have the result of taking out of the purview of Ordinance X-A, a large number of serious cases of resort to unfair means purity of the examination is very essential for the sanctity of educational system and the future development of the society. Any interpretation which weakens the purity of examination must be resisted. We are thereforee unable to accept the interpretation given by the learned Judge. We must thereforee disagree with the view of the Single Judge that the action could not have been taken by the University, because the finding of taking and giving assistance was based on the report of the examiner subsequent to the examination. We are of the view that there is no such prohibition under the Ordinance and this ground for allowing the writ petition cannot be sustained.

(7) Mr. Saharya, learned counsel for the respondents sought to impugn the order of the Single Judge on the other points which have been decided against him. In that connection he made a grievance that the charge which was sent to the respondents in the first instance on 5-9-1977 was that she had taken the assistance in answering the questions from Roll No. 28032 and 28033, while action has been taken against the respondents on the ground that either she had given assistance or that some unauthorised material was in circulation amongst candidates. The grievance is that action has been taken against her on a charge which was not given to her. Had it been a fact it would be a serious infirmity. But the situation is different. It is no doubt true that in the communication sent to the petitioner she was charged with having taken assistance from No. 28032 and 28033. But it also is not disputed and indeed it is clear from the proceedings of the E.D.C. of 10th December, 1977 (a copy of which has been supplied to us by the counsel of the university, Mr. Choudhury) that when respondent appeared before E.D.C. she was told that there could be two ways by which unfair means have been resorted, i.e., by her allowing the other candidates to copy from her or there being some common unauthorized material. She was specifically told that her answer to question I (a), (c) and (f) and those of other two girls were almost identical. She was asked to explain and the answer given by her was that she had not resorted to unfair means and that they had jointly prepared common notes which they had crammed. Though she was asked about the simple grammatical mistakes in all the three answers no satisfactory Explanatinn was offered by her. Thus it cannot be disputed that the respondent was specifically told before the E.D.C. that she was being proceeded with either having copied from a common source or to have allowed the girls immediately sitting behind her to copy from her answer books. Mr. Saharya has contended that the respondent was a girl student of B.A. and not a hardened criminal and sudden presentation to her of those new charges must have taken her by surprise and thus she had no proper opportunity. We do not find any merit and agree with the learned Single Judge that there was no prejudice caused to her because even though she filed the representation to the Vice Chancellor she made no such grievance before the learned Judge. These charges were explained in detail at the hearing. Thus full opportunity was given to her to explain the charge. We cannot thereforee find that there was any violation of principles of natural justice. The respondent also filed a representation to the Vice Chancellor. It is relevant to note that in the representation to the Vice Chancellor on 19-11-1977 she only reiterated that she did not resort to unfair means but made no grievance that she was not given proper opportunity by the E.D.C. or that she was taken by surprise by the new charges or that she did not understand the purpose of those charges. The grievance, thereforee that no proper or reasonable opportunity was given to her must be rejected.

(8) Mr. Saharya next tried to persuade us to hold that the finding of the committee that the respondent and the other two candidates had either copied from a common material or that the respondent had allowed the other two candidates to copy from her answer books is not supported by any evidence. He tried to show that the answers given by the respondent and other two candidates are not similar as has been found by the committee. In our view it is not competent for the court to indulge in the exercise of comparing the answer

books itself with a view to find out whether they bear close similarity because this court is not sitting as a court of appeal. The Ordinance has empowered the committee to look into this aspect after holding an enquiry. Once the court finds that the principles of natural justice have been satisfied and reasonable opportunity had been given to the candidate the jurisdiction of this court cannot be invoked any further for considering the case on merits, unless it could be shown that the finding was based on no evidence or a conclusion was reached which no reasonable person properly instructed in law could have arrived at. None of these conditions are attracted in the present case. The examiner who compared the answer books has opined that there are similarities in the questions I (a), (c) & (f) between the respondent and the other two girls with roll Nos. 28032 and 28033. He has also noticed that the appearance of similar mistakes suggests collusion. E.D.C. after considering the Explanation given by the respondent has not found possible to accept the version of the candidate about the striking similarity between the three candidates. The committee was convinced that either there was some unauthorised material in circulation amongst the candidates or the respondent allowed the girls to copy from her answer books. On the insistence of Mr. Saharya we had a look at the answers given by the respondents and Roll Nos. 28032 and 28033 copies of which have been filed by the University) and it appears to us that the findings arrived at by the University authorities are supported by the material on record and are not in any way perverse or unreasonable. In this connection reference may be made to Board of High School Inter-mediate Education U.P. Allahabad and another V. Bagleshwar Prasad and another : [1963]3SCR767 , where also action was taken on a charge which covered both the possibilities namely that either the delinquent had copied from the other candidate or he allowed the other to copy from his answer book or both of them had copied from a common source. In upholding the action of the university the Supreme Court observed :

'In the matter of 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.'

The plea of Mr. Saharya therefore fails.

(9) As we have rejected the other contention urged on behalf of respondent and have also found against her on the point on which the writ petition was allowed by the learned Judge, the result inevitably would be to allow the appeal and dismiss the writ petition; the necessary consequence then would be that the respondent would have to start for taking examination of B.A. Part II onwards afresh. This court had however on 13-7-1978 permitted the respondent to attend the lectures in the College for Part III B.A. (Pass) course. By further order of 28-9-1978 subject to certain conditions the respondent was also allowed to appear in the supplementary examination for part III though the result was directed to be withheld. When the learned Judge allowed the writ on March 21, 1979, he also gave a direction to the University to declare the result of the petitioner with reference to part II and part III examination of B.A. (Pass) course. The University filed an appeal but the stay was declined though the result declared by the University was made subject to the result of appeal. The Controller of Examination was in the court when we heard the appeal and on our enquiry informed us that the respondent has passed both in part II and part III of B.A. (Pass) Course. As the result of allowing the appeal normally would be the quashing of part II and part III examination, we had made enquiries from the counsel for the University and the controller of examination whether in view of the fact that the university had filed the appeal as this case raised question of the principle and to establish its right to proceed against a candidate for the use of unfair means which are detected subsequent to the examination and as that has been answered in favor of the university and considering that the respondent had succeeded before the single Judge, it would not be possible for the university to take a lenient view in the matter and not to compel the respondent to go through the process of taking part II and part III of B.A. (pass) all over again.

This suggestion of ours should not be construed in any manner to weaken the authority of University in proceeding against a candidate who resorted to unfair means nor should we be understood in any manner to even remotely weakening the sense of indignation of the society against those who resort to unfair means in the examination. We were only persuaded to suggest to the university to take a lenient course because of the fact that the writ petition had succeeded before the single Judge and under orders of this court respondent had set in the examination and had passed therein. We were assured by the Controller of Examination and also by the University counsel that taking into view all circumstance the university will take a lenient view of the matter and that it will not cancel the result of the part Ii and part Iii examination taken by the respondent but that she will be awarded B.A. (Pass) degree operative from April' 1980 and not earlier. We feel that this is a very reasonable view taken on behalf of the appellant and have no doubt that the assurance given by the counsel by the University and the Controller of Examination will be honoured by the authorities. The counsel for the appellant informed us that the respondent will not raise any objection to this course, i.e. if the University awards the degree to the respondent operative from April, 1980. Before we part with the case we would like to notice one aspect in the matter of holding enquiry on the use of unfair means. Clause Ii of Ordinance X-A provides for representation to the Vice Chancellor for review against the order of the Executive Council. We find that the University has no procedure or practice of supplying a copy of the report of E.D.C. to the candidate concerned. The candidate therefore does not know the reasons for taking action against him in order to effectively represent his case to the Vice Chancellor. We feel that though the present procedure being followed by the University may satisfy technically and strictly the principle of natural justice yet it will serve to instil a greater sense of confidence in the examinee and all concerned if a copy of the report of the E.D.C. was made available to the candidate so that he can make an affective representation, to the Vice Chancellor. After all to make a meaningful representation the candidate should know what has weighed with the Executive Council to decide against him. It is only then he can meet the points decided against him.

(10) We are making this suggestion for consideration of the University so as to further subserve the ends of justice in holding a fair enquiry. With these observations the appeal is allowed, but the parties will bear their own costs.

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