

**E.V. Kumar Vs. the University of Madras, Represented by the Registrar University of Madras**

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**Court :** Chennai

**Decided On :** Aug-12-1963

**Reported in :** AIR1964Mad460

**Judge :** S. Ramachandra Iyer, C.J. and ;Ramakrishnan, J.

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

**Appeal No. :** Writ Appeal No. 123 of 1963 and W.P. No. 1132 of 1962

**Appellant :** E.V. Kumar

**Respondent :** The University of Madras, Represented by the Registrar University of Madras

**Advocate for Def. :** C.N.S. Chengalvarayan and ;M.R. Narayanaswami, Advs.

**Advocate for Pet/Ap. :** R. Venkatachari and ;R. Desikan, Advs.

**Disposition :** Appeal allowed

**Judgement :**

**Ramakrishnan, J.**

1. As an outcome of the B. Sc. degree examination (New Regulation) held by the University of Madras in April 1962, two candidates one bearing roll No. 282 named E.V. Kumar and another bearing roll No. 283 named R. Mukundan were charged with malpractice while answering the paper on mathematics. It was reported to the Registrar of the University by the Additional Examiner for the paper, that he had reasons to suspect malpractice on the part of the aforesaid candidates, in answering their mathematics paper, because in the words of the Additional Examiner:

'(1) question 2 (b): The answer of one candidate is the word for word reproduction of that of the other and such verbatim reproductions can rarely occur in answering the problems of this type.

(2) Question 6 [a]: One answer is the exact reproduction, of the other. In relations (4) and (5) occurring in the answers, number one is marked in the same fashion as follows:

(3) Question 10(u): Mistakes of the same character occur in the answers in exactly the same places.

(4) Comparison of the answers to the following questions reveal also the same steps and the same mistakes committed by both the candidates.....'

2. On this report which is dated 4-5-1962, the' Registrar of the University of Madras issued an official memorandum on 10-5-1962, to 'both the candidates, containing identical charges of malpractice, couched in the following terms:

'The Examiner in Mathematics.....has reported that he has reasons to suspect malpractice (word for word reproduction of answers of another candidate) in the answer book of candidate with roll No. 282/ with roll No. 283/ in part III group B ancillary Mathematics Paper I. He is, therefore, asked to explain in writing within a week from the date of receipt of this communication, why disciplinary action should not be taken against him for the above malpractice.'

3. The candidate Kumar in reply to the charge, denied it and stated that his seating position in the Examination hall was such that he was completely separated from

other candidates by a distance which would 'have made it impossible for him to commit any malpractice, and that further ha was shortsighted. His standard in mathematics was quite good, and there was no need for him to resort to copying. Mukundan also denied the allegation, and stated that he did not permit any one to copy his answer paper, nor was he aware of anyone having done such an illegal act.

4. The procedure of the University thereafter was to get the matter considered by a Disciplinary Committee of the Syndicate, and this Committee, in a resolution found both the candidates guilty of the charge, and made a recommendation which; the University authorities accepted, that the result of the examination, of the candidates should be can-celled, and that they should be debarred from sitting for the next two examinations held by the University.

5. Against the above order of the University of Madras (first respondent), the two candidates filed W. Ps. Nos. 987 of 1962 and 1132 of 1962, in this Courts, praying for the issue of a writ of certiorari, under Article 226 of the Constitution, or other appropriate writ, to quash the proceedings of the University. Veeraswami, J. who heard the writ petition of Kumar, after observing that the charge in the case could have been more specific, instead of repeating the language used by the Examiner in his report, came to the conclusion that the charge thus framed did not prejudice the candidate in his defence. He also found that the requirements of natural justice had been complied with, and that the candidate was given an adequate and reasonable opportunity of meeting the charge. The order of the University was confirmed and the writ petition was dismissed. Against this decision', W. A. No. 123 of 1963 has been filed Under the Letters Patent, and has come before us for decision. While hearing the writ appeal, we found that the subject-matter of W. P. No. 1132 of 1962, the petition filed for a writ of certiorari Under Article 226 filed by R. Mukundan, candidate with roll Ho. 283, involved matters so clearly interlinked with the writ appeal that it would be in the interests of justice that both the writ petition and the writ appeal were disposed of together. We accordingly recalled this writ petition to our file, and proceeded to dispose of the writ petition also simultaneously with the appeal.

6. The main ground on which in our opinion, the candidates in both the cases have suffered a serious prejudice, is the vagueness of the charge, and the absence. of a proper enquiry directed for the purpose of separating the innocent from the guilty out of the, two candidates subjected to punishment. For dealing with such cases, where the charge framed has been alleged to be so defective that no proper opportunity should be deemed to have been given to the candidate to meet it no general rule can be postulated for the guidance of the Court. The circumstances and facts of each case will have to guide the Court for its decision. On a careful consideration of the circumstances in the instant cases we have no doubt that the charges framed in respect of both the candidates were seriously defective in this respect. The report of the Examiner which has been extracted above shows that the only material which he discovered, was the identity of the answers of the two candidates, in respect of certain questions in a paper on mathematics. the examiner must have acted on the report of the Moderator who valued the papers. Acting on the report of the Examiner, the University Registrar framed a charge for malpractice. The word malpractice is a term of general import and requires to be more clearly specified. The charge extracted above does make an attempt at specification, by describing the malpractice as 'word for word reproduction of the answers of another candidate'. In other words, the malpractice imputed to both the candidates, was copying from the answer paper of another candidate, in the examination. But the suggestion of copying an answer paper in an examination would necessarily imply, that there was already a written answer paper of some other candidate, which the delinquent candidate copied. In that process, the candidate who wrote the original answer paper might be quite innocent, while the candidate who copied, might be the sole delinquent. It may also happen that the\* candidate who wrote the original answer paper might have abetted the candidate who copied, by giving him facilities for such copying in more than one manner, which it is unnecessary for us to specify. In the former case, the candidate who wrote the original paper Would be completely innocent, and the other candidate who took advantage of his position in the examination hall for making a copy, alone would be guilty of any malpractice. But in the second of the alternatives mentioned above, both could be guilty. But what we have in this case, is a situation of two candidates, about whom the only allegation is that their answer

papers bore suspicious similarities. As far as we are able to find out from the record no other material had been gathered for the purpose of fixing the relative culpabilities of the two candidates. A reference was made to the seating arrangements in the examination hall, as one of the factors which the authorities usually take into account, and which they also did take into account in this case. The seating arrangement shows that the candidate with roll No. 282 was seated in front of the candidate with roll No. 283. That would make it more; likely that candidate No. 283 copied from 282, and not vice versa. But the candidate No. 282 might have also Helped the candidate No. 283 by giving him access to his answer paper. Of all these necessary circumstances, which would enable one to separate the guilty from the innocent, in a composite allegation involving two persons as culprits as in this case, we have no data. Just to illustrate this point, namely, that owing to the vagueness of the charges the candidates felt themselves completely at a loss to meet them, we may point out that while candidate with roll No. 282 tried to justify himself by saying that he never copied, that it was impossible for him to copy and that he was short-sighted, the candidate with roil No. 283 took a different line, and pleaded that he did not permit any one to copy his answer paper', nor was he aware of any one having done such an illegal act. It appears to us that it would have been far better if the University authorities had made an adequate preliminary enquiry into these! circumstances before proceeding to frame the charges against the candidates. It is not for us to indicate the precise manner of conducting such an enquiry, or the points that should be taken into consideration for the purpose. That is a matter failing within the exclusive jurisdiction of the University authorities. But some of the points which would strike any one as relevant, would be the fact that the paper answered, ,is one on the subject of mathematics, where a similarity of the steps followed in a solution to a problem, could very well be due to a common source of the working out of the steps, either in a lesson taught in the lecture hall, or in a book-work worked out in a text book. The general ability of the candidate on the subject as revealed by his other answers, would also be a circumstance which might be relevant. But, as already mentioned, we do not propose to lay down any principle for guidance in this matter and it is for the University authorities to decide it. But it does appear to us. that the cursory manner in which the charge has been framed, leaving the

candidates totally in the dark, as to what precise allegation they had to meet, whether candidate with roll No. 282 copies from the candidate with roll No. 283, or vice versa, or whether the one abetted the other, gravely prejudiced the candidates in their defence. We would also like to point out, that these disciplinary actions involve grave consequences to the candidates. It may very often happen, that the entire academic future of the candidates is affected by a punishment of the present kind. In such cases, one would have expected an enquiry by the University authorities to be more circumspect and fuller, than what we have noticed in the instant case. We only hope that in similar cases arising in future, the University authorities would deal with them, with greater care and attention, and awareness of the serious consequences which they entail, to the young people sitting for the examinations.

7. We allow the appeal as well as the writ petition, and quash the order of the first respondent University in both the cases.

8. Before we conclude, we wish to point out another regrettable feature in this case, arising out of the fact that the same learned counsel appeared for both the candidates. It would seem that the interests of the two candidates could be in conflict, because it may very well happen that one candidate is innocent, and the other guilty, and they will have to make out in any event, the absence of collusion between the two. It would have been in such circumstances, far better, if the same learned Advocate had not taken up the defence of both the candidates, when there was every likelihood of their interests being in conflict.

9. In the circumstances, there will be no order to costs.