

Mir Chand Vs. H.P. University

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Court : Himachal Pradesh

Decided On : May-02-1972

Reported in : AIR1972HP109

Judge : R.S. Pathak, C.J. and; C.R. Thakur, J.

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

Appeal No. : C.W.P. No. 214 of 1971

Appellant : Mir Chand

Respondent : H.P. University

Advocate for Def. : Inder Singh, Adv.

Advocate for Pet/Ap. : K.D. Sud, Adv.

Disposition : Petition dismissed

Judgement :

R.S. Pathak, C.J.

1. The petitioner has applied for relief under Article 226 of the Constitution against disciplinary proceedings resulting in an order disqualifying him from appearing at the Himachal Pradesh University examinations for three years.

2. The petitioner is a student of the Government Degree College, Kulu. He appeared in the B. A. Part-I examination with English, Economics, Political Science and Hindi as his subjects. While taking the paper of Political Science on May 7, 1971, he is said to have been found with a piece of paper in his hand. Shri Jiwa Nand Jiwan, an Invigilator in the examination hall, required him to hand over the paper but the petitioner tore it into two pieces and the Invigilator was compelled to snatch the pieces from his hand. He was alleged to have pushed the Invigilator and to have attempted to recover the pieces of paper back. On June 21, 1971, a charge-sheet containing four charges based on those allegations was issued to him and he was called upon to submit his explanation and to appear before the Examination Discipline Committee. On July 4, 1971, the petitioner replied denying the charges. He admitted the existence of the paper, but did not accept its ownership. On July 30, 1971, he appeared before the Examination Discipline Committee, which consisted of Shri Batuk Singh, a retired Member of the Union Public Service Commission, Shri K. L. Sethi a former Director of Education in the Himachal Pradesh Government, and Shri B. K. Sharma, formerly Principal of the S. D. B. College, Simla. The Committee found him guilty under Regulations 12 (d), 14 (c) and 20 of Volume I of the Punjab University Calendar, 1970, as applied to the Himachal Pradesh University, and disqualified him from appearing in any University examination for three years. On August 30, 1971, the petitioner submitted a representation to the Vice Chancellor of the University urging that the order disqualifying him was not justified and requested reconsideration of the matter. One of the allegations in the representation was that the material upon which action had been taken had not been disclosed to him and, therefore, the principles of natural justice had been contravened. On September 3, 1971, the Registrar of the University issued a detailed memorandum to the petitioner which set out that the Examination Discipline Committee had examined the reports received from the supervisory staff and after considering the petitioner's reply to the charge-sheet as well as the personal interview before the Committee he had been found guilty of using unfair means and of misconduct, and that accordingly he was disqualified from appearing in any University examination for three years as a punishment under Regulations 12 (d), 14 (c) and 20. The petitioner then submitted a further representation on October 28, 1971 to the

University praying for a review of the decision. The representation was considered by the Examination Discipline Committee, and was rejected. Intimation of the rejection was communicated to the petitioner on November 15, 1971.

3. A number of contentions have been advanced by learned counsel for the petitioner before us.

4. His first contention is that the petitioner was not given an adequate opportunity to represent his case inasmuch as the reports of the members of the supervisory staff had not been put to him during the proceedings before the Examination Discipline Committee. It seems to us clear that there is no substance in the submission. The statement of Shri Jiwa Nand Jiwan, the Invigilator, was before the Committee. It stated that he had found a slip of hand-written paper in the left hand of the petitioner, that he had asked the petitioner to hand over the paper but the petitioner attempted to tear it and succeeded in fact in tearing it into two pieces, but the Invigilator snatched the paper from his hand. When he did so, the petitioner pushed him and attempted to recover it back. There was also the statement of Shri Pran Khosla, the Centre Superintendent, recording the details already reported by the Invigilator and pointed out that the attitude of the petitioner had been defiant and that he had disobeyed the request of the Invigilator to hand over the paper. It appears that when the Centre Superintendent upon seizure of the paper required the petitioner to make a statement, the petitioner refused to do so. and a record of that fact was also made by the Centre Superintendent. That document was also before the Committee. The question whether those documents were put to the petitioner impelled us to send for the original record of the proceedings, and we find upon a perusal of that record that the documents were placed before him and he read them out in the presence of the Committee. The Minute of the Committee also states that an opportunity was given to the petitioner to make his defence, and it was after an appreciation of all the circumstances and the material before the Committee that the Committee held him guilty under the Regulations already mentioned above and directed that he be disqualified for three years. We have also before us the individual affidavit of each Member of the Committee. Therein, the records which were placed before the Committee have been detailed and it is averred that the documents were put to the petitioner by the

Committee. From the material before us. we are satisfied that all the relevant documentary evidence which was considered by the Committee when making the impugned order of disqualification was made available to the petitioner by the Committee and that he had adequate opportunity of presenting his case in support of his defence.

5. The next contention of learned counsel for the petitioner is that the Invigilator and the Centre Superintendent should have been produced before the Examination Discipline Committee for cross-examination by the petitioner, and because of that omission there was a breach of the principles of natural justice. We have carefully considered the contention, and it seems to us, having regard to the state of the record before us, that the petitioner never asked for the summoning of either of the two gentlemen. The affidavits of the Members of the Committee are clear on the point, and no reason has been shown to doubt the averments made therein. It seems to us settled in law that it is not open to a petitioner to complain of the omission to produce a witness if he has not applied for the production of that witness. The question was considered by the Privy Council in *University of Ceylon v. Fernando*, (1960) 1 All ER 631. The entire case against the petitioner there turned upon the testimony of one Miss Balasingham. She was not produced during the inquiry proceedings. A contention was raised that the proceedings contravened the principles of natural justice because of the omission to produce her. Repelling the contention, the Judicial Committee observed :--

'But it remains to consider whether, in the course they took, the interviews must be held to have fallen short of the requirements of natural justice on the ground that the plaintiff was given no opportunity of questioning Miss. Balasingham. She was the one essential witness against the plaintiff and the charge in the end resolved itself into a matter of her word against his. In their Lordships' view, this might have been a more formidable objection if the plaintiff had asked to be allowed to question Miss. Balasingham and his request had been refused. But he never made any such request although he had ample time to consider his position in the period of ten days or so between the two interviews'.

The validity of these observations has been accepted by the Courts in our country, and the principle has been affirmed by the Supreme Court in *Suresh Koshy George v. University of Kerala*, AIR 1969 SC 198. We are of the opinion that the second contention is also without substance.

6. It is then urged that the petitioner was charged with copying from the paper seized by the Invigilator, but the findings on which the Examination Discipline Committee has proceeded and has made the impugned order of disqualification was not founded upon that charge. It is true that the impugned order does not proceed on the basis that the petitioner was found copying from that paper, but when regard is had to the other charges framed against the petitioner it is clear that the provisions of the Regulations invoked by the Committee against the petitioner were fairly attracted. Regulation 12 (d) reads:

'If during a University examination a candidate is found having in his possession papers, books or notes or is found having written notes on any part of the clothes worn by him or on any part of his body or table or desk or is found in possession of foot-rule and/or instruments like set-squares, protractor, slide rules, etc.. with notes written on them and which notes, paper or books or the material written on foot-rules or instruments, or clothes worn by him or on any part of his body or table or desk, etc. are helpful to him during the examination, and could be of assistance to him and if his possession of such material is found to be mala fide he shall be disqualified from appearing in any University examination for two years, including that in which he is found guilty if he is a candidate for an examination held once a year, or for four examinations, including that in which he is found guilty, if he is a candidate for an examination held twice a year.'

Regulation 14 (c) provides :

'A candidate found guilty of serious misconduct in the examination hall or misbehaviour towards the Superintendent or any member of the Supervisory staff outside the examination hall shall be disqualified from appearing in any University examination for a period of two to five years according to the nature of his misconduct.'

And Regulation 20 declares :

'A candidate who refused to obey the Superintendent of the examination or any other member of the supervisory staff or changes his seat with another candidate or deliberately writes another candidate's Roll Number on his answer-book or creates disturbances of any kind during the examination, or otherwise misbehaves in or around the examination hall, shall be liable to expulsion by the Superintendent and shall be awarded any of the following punishments according to the seriousness of the offence :

(i) Cancellation of the answer-book of the paper concerned :

(ii) Disqualification from appearing in any University Examination which may extend to three years.

A perusal of the three provisions amply demonstrates that upon the material before the Committee, there was justification for finding that the petitioner was liable for punishment with reference to those provisions. It is also clear that the period of disqualification falls well within the maximum period provided by Regulations 14 (c) and 20.

7. It is next contended that the representation made by the petitioner on October 28, 1971, for review of the impugned order should have been placed before the Vice Chancellor, and after the Vice Chancellor had recorded his reasons, it should have gone to the Examination Discipline Committee. It is pointed out that, in fact, the representation was received by the Assistant Registrar, that it was never placed before the Vice Chancellor, and instead proceeded directly to the Committee. We are referred to Regulation 21, the proviso to which lays down :

'Provided that in cases of the alleged use of unfair means in connection with examination if in the opinion of the Vice Chancellor facts have been brought to light within 30 days of the receipt of the decision by the candidate which, had they been before the committee, might have induced them to come to a decision other than the one arrived at, then the Vice Chancellor may order that such facts be reduced to writing and placed before the Committee, the Committee shall then

reconsider the case.'

It is difficult to appreciate the force of the contention now made when, in point of fact, the representation was actually placed before the 'Committee and was considered by it. The Regulation requires the representation to be routed through the Vice Chancellor to enable a screening of the representation and if the Vice Chancellor finds that new facts brought to light subsequently would justify reconsideration of the decision by the Committee, he is empowered to refer the representation to the Committee. If the contention of the petitioner be accepted as to the facts, the process of screening was given a go-bye and the representation was placed directly before the Committee. We are unable to appreciate how that procedure, if it was followed at all, could be said to have prejudiced the case of the petitioner. But, as the record is before us, we have looked into the documents themselves, and we find that in fact the representation was placed before the Vice Chancellor before it was forwarded to the Committee.

8. The last contention for the petitioner is that the impugned order is not a speaking order, and it is urged that as the proceedings before the Examination Discipline Committee were quasi-judicial in nature, it was necessary that reasons should have been rendered by the Committee. Reference has been made to a number of decisions before us in support of this submission, but for the purpose of the point under consideration we consider it unnecessary to take exception to the proposition of law put forward by learned counsel for the petitioner. The material before the Committee consisted of the brief statements recorded by the Invigilator and the Centre Superintendent. There was also the conduct of the petitioner in declining to make any statement. After considering all this material, along with the explanation of the petitioner, the Examination Discipline Committee recorded its Minute. The Minute summarises the deliberations of the Committee. The content of that Minute was reproduced in the memorandum dated September 3, 1971 sent by the University to the petitioner. We are satisfied from what is set out before us that the Committee accepted the facts as reported by the Invigilator and the Centre Superintendent and can be said to have given its reasons in its Minute for having made the impugned order.

9. As none of the contentions for the petitioner have found favour with us, the petition fails and is dismissed. In the circumstances of the case, however, there is no order as to costs.

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