**CIVIL WRIT**

*Before Khosla and Harnam Singh JJ.*

1952

June 17th

JAGDISH CHANDAR KALRA,—*Petitioner,*

*versus*

THE UNIVERSITY OF PUNJAB, SOLAN,—*Respondent.*

**Civil Writ No. 56 of 1952**

*East Punjab University Act (VII of 1947)—Sections 20 and 31—Regulations 6, 12 and 18—Whether invalid or* ultra vires—*Right of personal appearance—Whether allowed by the Act—Constitution of India—Article 226—High Court's power to issue* mandamus *to the University.*

*Held*, that Regulations 12 and 18 have been framed by the Senate under subsection (1) of section 31 and not under subsection (2) (f) of section 31. Subsection (2) is only illustrative and not exhaustive. These Regulations cannot, therefore, be said to have been framed without proper authority and are in every respect valid.

*Held*, that Regulation 6 is *intra vires* the authority that made the Regulation. Section 20 (5) of the Act empowers the syndicate to delegate any of its executive functions to the Vice-Chancellor or to the sub-committee or any other authority or body constituted by the Act or Regulations. The Syndicate was, therefore, within the bounds of law to delegate its functions in the matter of cases relating to the use of unfair means in connection with examinations to the standing committee which dealt with the case of the applicant.

*Held*, that the Act does not give the right of personal appearance to any examinee and such a right cannot be claimed on the ground that it is sanctioned by the principles of natural justice. Scores of instances can be found in which the subject has no right of personal appearance but has a right of making his defence, and as long as he is given an opportunity of representing his case to the authority concerned the orders passed to his detriment will not be held invalid merely because he was not allowed to appear personally before that authority.

*Held*, that the word "person" occurring in Article 226 of the Constitution includes the University of the Punjab which is a corporation. That being so, the High Court has authority to issue *mandamus* to the University, if the other conditions for that relief are present.

*Emperor* v. *Sibnath Banerjee* (1), in the matter of G. A. Natesan and K. B. Ramnathan (2), *R.* v. *Cambridge University* (3), relied upon and *Dipa Pal* v. *University of Calcutta* (4), held not applicable.

Petition under Article 226 of the Constitution, praying as follows:—

(a) that a writ in the nature of *mandamus* may be issued directing the respondent to allow the

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(1) A. I. R. 1945 P. C. 156
(2) I. L. R. 40 Mad. 125 at p. 142
(3) 93 E. R. 698
(4) 56 C. W. N. 278

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petitioner to appear in the B.A. Degree Examination of the Punjab University to be held in the year 1952;

(b) that any other appropriate order or direction may be made of the like nature which would meet the ends of justice; and

(c) that the petitioner be awarded costs of the petition.

A. N. GROVER and *H. L.* SARIN, for Petitioner.

R. B. BADRI DAS and I. D. DUA, for Respondent.

ORDER

Khosla J.

KHOSLA, J. This is a petition under Article 226 of the Constitution praying for a writ in the nature of *mandamus* against the Punjab University. The admitted facts are briefly as follows. The petitioner was appearing in the B.A. Supplementary Examination held in September 1950, at Centre No. 1, New Delhi. On the 25th of September 1950, the petitioner went to take the Political Science paper B. While the examination was in progress the Superintendent saw some papers or notes near the place where the petitioner was sitting. These papers are extracts from a book on Political Science and are in the nature of questions and answers and there can be no doubt that these notes could have been of assistance to an examinee, if the questions set in the Question Paper related to the topics dealt with in these notes. On discovering these papers the Superintendent charged the petitioner with improper conduct in the examination hall and the petitioner refuted the accusation. Hot words were exchanged between the Superintendent and the petitioner and the matter was reported to the University authorities. Ultimately the petitioner was disqualified from appearing at any examination of the Punjab University for the years 1950, 1951 and 1952. The petitioner's contention is that this order was wholly illegal and void and therefore a writ of *mandamus* should issue to the University

authorities directing them to allow the petitioner to appear in the B.A. Examination to be held during the current year.

It is clear from a reading of the Regulations framed by the Punjab University under section 31 of the East Punjab University Act, 1947, that action against the petitioner was taken under Regulations 12 and 13 framed under section 31. These Regulations are printed at page 75 of the Punjab University Calendar, Volume I. The procedure for dealing with the use of unfair means by examinees is laid down in Regulation 6 under sections 20 (1) (c) and (2) and 31 (b) and (c) of the Act. This Regulation is printed at page 33 of the same book. The contentions of Mr Grover who appeared on behalf of the petitioner are (1) Regulation 12 is *ultra vires*, (2) Regulation 6 is *ultra vires* because it does not give the examinee the right of personal hearing and (3) the petitioner in this case was not given an adequate opportunity of making his defence before the University authorities. Mr Grover also tried to argue that the findings of the University authorities on merits were not justified by the evidence before them, but we made it quite clear to him that this was an argument which we could not entertain in a petition under Article 226 of the Constitution and indeed such an argument cannot be entertained, if it is held, that the procedure laid down by the University Act was followed and Regulations 12 and 6 are *intra vires*. The sole questions for decision are whether (1) Regulation 12 at page 75 and (2) Regulation 6 at page 33 of the Punjab University Calendar, Volume I, are in any way invalid.

I shall first examine Regulation 12. The argument advanced is that this Regulation has been framed under section 31 (2) (f) of the East Punjab University Act, 1947, and the matter is not covered by item (f). Now section 31 reads as follows :—

> "31 (1). The Senate, with the sanction of the Government, may from time to time make regulations consistent with this Act to

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provide for all matters relating to the University.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—* * * * *
(f) the appointment of Examiners, and the duties and powers of Examiners in relation to the examinations of the University.
* * * * *"

Mr Grover concedes that Regulation 12 could have been framed under subsection (1). Now the authority to frame regulations is conferred by subsection (1) and not by subsection (2). Subsection (2) merely gives a list of the items with regard to which regulations may be made by the Senate. The list is in no way exhaustive as the wording of the subsection itself indicates "in particular, and without prejudice to the generality of the foregoing power".

Subsection (2) therefore is merely illustrative and the power to make regulations is conferred by subsection (1). Since Regulation 12 falls within the scope of subsection (2) it cannot be said that the Regulation was framed without proper authority merely because it purports to relate to item (f). A case almost exactly on all fours was considered by their Lordships of the Privy Council in *Emperor* v. *Sibnath Banerji* (1). In that case section 2 of the Defence of India Act empowered the Central Government to make certain rules. Subsection (1) gave the general power while subsection (2) was illustrative in a way, similarly to subsection (2) of section 31 of the University Act. The wording of subsection (2) of the Defence of India Act was similar to the wording of subsection (2) of section 31. There too "without prejudice to the generality of the powers conferred by subsection (1)" rules could be made for matters dealing with certain items. A certain rule which was under the consideration of their Lordships of the

(1) A. I. R. 1945 P. C. 156

Privy Council fell within the scope of subsection (1) but not under any of the items detailed under subsection (2), and their Lordships of the Privy Council came to the conclusion that subsection (2) was merely illustrative and that the rule-making power was conferred by subsection (1). The following passage from the judgment may be quoted with advantage—

> "In the opinion of their Lordships, the function of subsection (2) is merely an illustrative one; the rule-making power is conferred by subsection (1), and 'the rules' which are referred to in the opening sentence of subsection (2) are the rules which are authorised by, and made under, subsection (1), the provisions of subsection (2) are not restrictive of subsection (1), as indeed is expressly stated by the words 'without prejudice to the generality of the powers conferred by subsection (1)'".

Mr Grover drew our attention to the view taken by the Federal Court in that case, but in view of the fact that the Privy Council on appeal took the contrary view I do not think we need seriously entertain the correctness of the view expressed by the Federal Court. I must therefore hold that Regulation 12 was framed with proper authority and, falling as it does within the scope of section 31, is in every respect valid.

The Senate has framed rules for dealing with a candidate who is found guilty of misconduct in the course of an examination and the procedure is laid down in Regulation 6. It is clear in the present case that this procedure was followed. The Superintendent made a report and then a sub-committee consisting of Mr Justice Bhandari, Principal C. L. Anand and Dr Bhupal Singh, Registrar, examined the case and found that the petitioner had been guilty of misconduct inasmuch as he had brought into the examination hall notes which would assist him in answering

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the Question Paper. These notes were found on his table and he could give no innocent explanation. Within thirty days the petitioner sent up a representation along with his affidavit and the affidavits of two persons. The matter was referred to the Superintendent and he sent his report and finally the petitioner was held to have committed the offence of which he was found guilty. The petitioner was given an opportunity of being heard and the contention of Mr Grover that he was not allowed to appear personally does not render the proceedings in any way invalid. The Act does not give the right of personal appearance to an examinee and such a right cannot be claimed on the ground that it is sanctioned by the principles of natural justice. Scores of instances can be found in which the subject has no right of personal appearance but has a right of making his defence, and as long as he is given an opportunity of representing his case to the authority concerned the orders passed to his detriment will not be held invalid merely because he was not allowed to appear personally before that authority. In the present case Mr Badri Das assures us that the petitioner did personally appear before the Registrar, but be that as it may I must hold that neither the University Act nor the Regulations made under it nor any principle of natural justice gives to the petitioner the right of personal appearance. That being so, it cannot be held that the procedure adopted was not in accordance with law or was in any way defective.

No other question arises in the case and the petitioner is not entitled to the writ prayed for. I would accordingly dismiss his petition with costs.

Harnam Singh J.

HARNAM SINGH, J. I concur in the order prepared by Khosla, J., but considering the importance of the case wish to add reasons for my opinion.

Mr Jagdish Chandar Kalra, hereinafter referred to as the applicant, applies under Article 226 of the Constitution of India for an order of *mandamus* directing the University of the Punjab to permit him to appear in the Bachelor of Arts Examination of the University to be held in 1952, A.D.

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Briefly summarized, the facts of the case are these. In September 1950, the applicant sat for the Bachelor of Arts Examination of the Punjab University. On the 25th of September 1950, the applicant took his examination in Political Science, Paper B, at Centre No. 1, New Delhi. Mr R. I. Gulati was the Superintendent while Mr Krishan Dev Bagai was the Deputy Superintendent at that Centre. On the 25th of September 1950, Mr H. K. Lalwani, Invigilator, seeing some papers lying on the applicant's table made efforts to secure those papers. The applicant, however, assaulted Mr Lalwani, thrust the nib of his pen in Mr Lalwani's wrist and threw a chair at him. Mr Lalwani fled from the place. Mr R. I. Gulati, and Mr Krishan Dev Bagai rushed to the place and secured the papers lying under the question paper on the table of the applicant.

Mr R. I. Gulati reported the incident to the Registrar, Panjab University, and along with his report sent the answer-book of the applicant and the papers recovered from his table.

From Question Paper B, Political Science, it appears that one of the questions was :—

> "Which is the highest Court of Judicature in Canada ? What is its relation to the Privy Council of England since the passage of the Statute of Westminister ?"

In the papers recovered from the table of the applicant are *inter alia* pages Nos 211, 212, 229, 230, 233 and 234 of the book "Politics made easy." In the answer to question No. 8 appearing at page 234 of the book it is stated :—

> "The Supreme Court is the highest Court in Canada. It consists of one Chief Justice and five puisne Judges. They are appointed by the Governor-General and hold office during good pleasure."

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Now, the case of the applicant was laid before the Standing Committee appointed by the Syndicate under Regulation 6 made under section 20 (5) of the East Panjab University Act, 1947, hereinafter referred to as the Act. In dealing with the case the Committee came to the conclusion that the case of the applicant fell within Regulations 12 and 18 made under section 31 of the Act.

Regulation 12 provides *inter alia* that a candidate found guilty of copying from any paper, book or note, shall, in the case of Bachelor of Arts Examination, be disqualified from passing any examination in that year and in the following two years. Regulation 18 provides *inter alia* that a candidate who refuses to obey the Superintendent of the Examination, or creates disturbance of any kind during the examination, or otherwise misbehaves in the examination shall be liable to explusion by the Superintendent as well as disqualification for three years in the case of Bachelor of Arts Examination. In accordance with the Regulations cited above the applicant was disqualified from taking examination for three years, 1950 to 1952. In these circumstances, the applicant moved the Vice-Chancellor of the University within the proviso to Regulation 6, but the representation failed and has been dismissed.

In the application under Article 226 of the Constitution the applicant applies for a writ of *mandamus* on the ground that Regulations 12 and 18 are *ultra vires* the authority that made them and that in any case the procedure prescribed by Regulation 6 has not been followed.

That the Legislature possessed legislative competency to make Punjab Act No. VII of 1947 is not disputed. Entry 17 List II, Provincial Legislative List, Government of India Act 1935, authorized the Provincial Government to make laws on education including Universities. That being so, it is not open to challenge that the Provincial Legislature had no authority to make Punjab Act No. VII of 1947.

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Then comes the question as to whether the Panjab University is amenable to the mandate in the nature of *mandamus* from this Court in the exercise of its jurisdiction under Article 226 of the Constitution. Article 226 (1) of the Constitution reads- -

> "226. (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue *to any person or authority*, including in appropriate cases any Government within those territories, directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for *any other purpose*."

Section 4 of the Act provides that the University is a body corporate known by the name of the East Panjab University having perpetual succession and a common seal, with power to acquire and hold property, movable and immovable, to transfer the same, to contract, and to do all other things necessary for the purpose of its constitution and may sue in, or be sued by, its corporate name. Section 3 (39) of the General Clauses Act, 1897, defines the word "person" to include any company or association or body of individuals, whether incorporated or not. Article 367 of the Constitution provides that the General Clauses Act, 1897, shall apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. Clearly, the word "person" occurring in Article 226 of the Constitution includes the University of the Punjab which is a Corporation. That being so, this Court has authority to issue *mandamus* to the University if the other conditions for that relief are present.

Prior to the commencement of the Constitution the issuance of a writ of *mandamus* was regulated by

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section 45 of the Specific Relief Act, 1877. In cases falling under section 45 of that Act writ of *mandamus* could be issued requiring any specific act to be done or foreborne by any person holding a public office whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature.

Harnam Singh J.

Dealing with a case under section 45 Coutts-Trotter, J., said in the matter of *G. A. Natesan and K. B. Ramanathan* (1) —

> "The Syndicate is a creature of statute with certain duties imposed upon it by statute and those duties are to be carried out for the benefit of the public at large, and especially for that portion of the public which desires to utilize the educational advantages of the University. It seems to me too plain for argument that, where a statute appoints a body of persons, to carry out purposes of public benefit, the persons constituting such a body *ipso facto* become holders of a public office within the meaning of the section. It is not disputed that to hold otherwise would be to go contrary to a vast number of English decisions with regard to the writ of *mandamus* and that it would also give the go-bye to the principle which if not expressly enunciated is underlying numerous decisions of the High Courts both of Bombay and Calcutta. I am therefore of opinion that the Syndicate is a body amenable to the jurisdiction of section 45 of the Specific Relief Act, if the other conditions for that relief are present."

In England the Courts have refused to interfere with the internal affairs of the University only when there is a visitor, but in the absence of a visitor the Court has interfered. In this connection *R.* v. *Cambridge*

(1) I. L. R. 40 Mad. 125 at p. 142

*University* (1), may be seen. That being the position of law, I have no doubt that the University is amenable to a mandate in the nature of *mandamus* from the Court in the exercise of its special jurisdiction under Article 226 of the Constitution.

Mr Grover appearing for the applicant contends that Regulations 12 and 18 could not have been made under section 31 (2) (f) of the Act which empowers the Senate, with the sanction of the Government, to make Regulations providing for the appointment of Examiners and the duties and powers of Examiners in relation to the examinations of the University.

In order to appreciate the contention raised it is necessary to bear in mind that one of the purposes of the University is to do all acts as tend to promote study and research. Section 22 of the Act authorises the Senate to institute and confer such degrees and grant such diplomas, licences, titles and marks of honour in respect of degrees and examinations as may be prescribed by Regulations. Section 25 of the Act provides *inter alia* that no person shall be admitted as a candidate at any University Examination other than for Matriculation and those for diplomas or degrees in Modern Indian Languages and Oriental Title unless he produces a certificate from a College affiliated to the University to the effect that he has completed the course of instruction prescribed by Regulations. Section 31(2)(f) of the Act authorizes the Senate, with the sanction of the Government, to make Regulations relating to the appointment of Examiners, and the duties and powers of Examiners in relation to the examinations of the University.

From what I have said above it is plain that one of the purposes for which the University has been incorporated is to hold examinations for the conferment of degrees, diplomas, licences, titles and marks of honour. Section 31 (1) of the Act provides that the Senate, with the sanction of the Government, may, from time to time, make Regulations consistent with

(1) 93 E. R. 698.

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the Act to provide for all matters relating to University. Clearly, the Senate has authority to make Regulations 12 and 18 within section 31 (1) of the Act. It is not disputed that Regulations dealing with the use of unfair means and breaches of discipline in the examinations are Regulations on matters relating to University.

But it is said that Regulations 12 and 18 have been made within section 31 (2) (f) of the Act. That this is not so is plain from the language of the Act. In *Emperor* v. *Sibnath Banerji and others* (1), an identical contention was considered and ruled out. In deciding that case Lord Thankerton, said—

> "In the opinion of their Lordships, the function of subsection (2) is merely an illustrative one; the rule-making power is conferred by subsection (1), and 'the rules' which are referred to in the opening sentence of subsection (2) are not restrictive of subsection (1), as indeed is expressly stated by the words 'without prejudice to the generality of the powers conferred by subsection (1).'"

Indisputably, the contention raised is covered by the rule laid down by the Privy Council in A.I.R. 1945 P.C. 156. If so, I must hold that Regulations 12 and 18 were made with proper authority and fall within section 31 of the Act.

Then it is said that procedure prescribed by Regulation 6 has not been followed. Regulation 6 reads—

> "6. The Syndicate shall appoint annually Standing Committees to deal with cases of the alleged use of unfair means in connection with examinations, of deficiencies in attendances at lectures, and other matters affecting the discipline of students. When such Standing Committee is unanimous its decision shall be final except as given in the proviso below. If the

(1) A. I. R. 1945, P. C. 156.

Standing Committee is not unanimous the matter shall be referred to the Vice-Chancellor who shall either decide the matter or refer it to the Syndicate for decision.

Provided that in cases of the alleged use of unfair means in connection with examinations 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. A unanimous decision of the Committee shall be final. But in the event of a difference of opinion the case shall be referred to the Vice-Chancellor who may either finally decide the case himself or refer it to the Syndicate for final decision as he thinks fit."



In plain English, Regulation 6 authorizes the Syndicate to refer cases of the alleged use of unfair means in connection with examinations to a Standing Committee constituted under Regulation 6 made under section 20 (5) of the Act. In the present case the Standing Committee appointed by the Syndicate considered the case of the applicant and came to a unanimous decision that the applicant was guilty of the use of unfair means in the examination and an extract from page 234 of the book "Politics made easy", which was found to be in possession of the applicant. In these proceedings the case of the University is that the applicant assaulted Mr Lalwani Invigilator, thrust the nib of his pen in Mr Lalwani's wrist and threw a chair at him. If so, he was also guilty under Regulation 18 made under section 31 of

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the Act, under Regulation 6 the decision of the Standing Committee of the University being unanimous was final. The applicant, however, initiated proceedings within the proviso to Regulation 6. The Vice-Chancellor after giving opportunity to the applicant to be heard decided that there was no material to show that facts had not been brought to light which had they been before the Committee might have induced the Committee to come to a decision other than the one arrived at. That being so, I think that there is no substance in the objection that the procedure prescribed by Regulation 6 has not been followed.

Basing himself on *Dipa Pal* v. *University of Calcutta* (1), Mr Grover maintains that inasmuch as personal audience was not given to the applicant by the Standing Committee the decision of the Standing Committee could not be upheld. Indeed, it is maintained that the applicant has not been given an opportunity to defend himself and to offer an explanation, if any. In 56 C. W. N. 278 Bose, J., said—

> "In cases where breaches of discipline are detected by the invigilators or other officers present in the examination hall and candidates concerned are expelled from the hall or are otherwise dealt with, question of **any enquiry** or investigation upon notice to the candidates may not arise. But where no case of breach of discipline is actually detected but subsequently upon examination of the answer papers the Examiners come to entertain suspicion about adoption of unfair means by particular candidate or candidates and the Examination Board has to consider such cases and come to a determination as to the nature of the offence committed and has to apportion the penalty which can properly be inflicted upon the delinquents, it is only fit and proper that the party arraigned should have an opportunity to defend himself and to offer an explanation, if any."

(1) 56 C. W. N. 278

In the present case Mr Lalwani detected in the examination hall that the applicant was using unfair means in the examination. If so, the rule laid down in 56 C.W.N. 278 that the candidate should have an opportunity to defend himself and to offer an explanation, if any, has no application to the present case. In any case, the applicant put his case before the Vice-Chancellor of the University who found that the conclusion reached by the Standing Committee was correct. That being so, I overrule the contention that inasmuch as personal audience was not given to the applicant by the Standing Committee the decision of the Standing Committee could not be upheld. In such matters this Court will not interfere with the conclusion reached by the Standing Committee or the Vice-Chancellor provided there is anything on which the Standing Committee or the Vice-Chancellor could reasonably have come to that conclusion. Indeed, the authority of the University ought to be supported provided the University has acted according to law. In the present case there is not a syllable on the record to show that the Standing Committee and the Vice-Chancellor have not exercised their powers justly and fairly or that in the exercise of those powers the mandates of law have not been followed.

In these proceedings it was said that Regulation 6 was *ultra vires* the authority that made that Regulation. Section 20 (5) of the Act empowers the Syndicate to delegate any of its executive functions to the Vice-Chancellor or to the Sub-Committees appointed from among the members of the Syndicate, or to Committees appointed by it which may include persons who are not members of the Syndicate or to any other authority or body constituted by the Act or Regulations. Regulation 6 is, therefore, *intra vires* the authority that made that Regulation. If so, the Syndicate was within the bounds of law to delegate its functions in the matter of cases relating to the use of unfair means in connection with examinations to the Standing Committee which dealt with the case of the applicant.

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No other question arises in the case.

In the circumstances I would hold that the applicant is not entitled to the writ claimed.

In the result I dismiss with costs Civil Writ No. 56 of 1952.