

Rashpal Singh *v.* The Panjab University (Tek Chand, J.)

and clearly held that the Court should not be called upon to make two inconsistent decrees against the same property and that the appeal in that case had abated *in toto* as a consequence of its abatement against one of the respondents on the ground that the decree under appeal in *Om Sarup's case* was joint against all the defendants.

After a careful consideration of the entire law referred to above, we are of the opinion that this case falls clearly within instances Nos. IV (b) V and VI in the analysis of the judgment of the Supreme Court in *Nathu Ram's case* (made in an earlier part of this judgement) read in the light of the pronouncements of that Court in *Ram Sarup's case* and in the case of *Jhanda Singh and others* and that this appeal, after having abated against one of the collaterals, has become incompetent and cannot now be proceeded with against even the surviving respondents. We make this answer to the reference and direct that this appeal will now go back to the learned Single Judge for being disposed of in accordance with law in the light of this decision. In the circumstances of the case we make no order as to costs of the proceedings before us.

MEHAR SINGH, C.J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before Tek Chand, J.

RASHPAL SINGH,—*Petitioner*

versus

THE PANJAB UNIVERSITY,—*Respondent*

Civil Writ No. 95 of 1968

March 27th, 1968.

Panjab University Calendar (1966)—Vol. I Part D(ii), Regulation 13(b)—Candidate receiving help not from "another candidate" but from another source—Whether guilty under the Regulation—Receiving help in a University examination—Whether includes hearing of answers to the questions—"Copying" and "Receiving help"—Distinction between.

Held, that Regulation 13(b) of Panjab University Calendar (1966) does not assail receiving help from any source other than from another candidate. A help received from the supervisory staff or from an outside agency is not within the mischief of the provision and this is a serious lacuna. The language of the Regulation 13(b) cannot be used for extending its scope. The regulation is a penal measure and has to be construed strictly. No punishment can be awarded under this Regulation to a candidate who has received help from another source other than that of some candidate.

Held, that receiving help is conscious and a voluntary act in pursuance of some attempt or effort. No examinee can help hearing the answer if it is uttered sufficiently loudly by one examinee to another. Those who do not ask the answer cannot be punished under Regulation 13(b) because they cannot avoid hearing the answer being within ear-shot. A person can restrain himself from talking or from otherwise communicating, as these are voluntary acts and capable of being willed. But same is not true of acts of hearing which are effortless and therefore involuntary.

Held, that "copying" is distinct from "receiving help". The term "copying" means transcribing from another paper, book, etc. It is also used in the sense of "duplicating" or "imitating". There must be an original from which copy or transcription is made or duplicated. It, however, does not cease to be copying if the copy is not exact or it contains errors in transcription. In the case of a candidate found 'copying', he is guilty whether he copies from the answer-book of another candidate or from any paper, book or note, but in the case of 'receiving help', the Regulation confines it to getting it from another candidate.

Petition under Articles 226/227 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order, or direction be issued quashing the orders of the respondent disqualifying the petitioner for two years.

G. P. JAIN, AND G. C. GARG, ADVOCATES, for the Petitioner.

J. S. WASU, SENIOR ADVOCATE WITH H. S. SAWHNEY, ADVOCATE, for the Respondent.

ORDER

TEK CHAND, J.—This is a writ petition under Articles 226/227 of the Constitution by Rashpal Singh, an examinee for the Higher Secondary Examination (Part I) which he took in March, 1967.

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The respondent is the Punjab University. The petitioner's Roll No. was 150413 and his examination centre was Government Higher Secondary School, Dera Baba Nanak. On the day he took his examination, there were 98 candidates sitting in the same hall vide Annexure C. The seat of the petitioner was the last in the third row. Candidates with Roll No. 150414 and 150415 occupied first two seats in the fourth row. There were 16 seats each in the third and the fourth rows.

A complaint was published in the newspaper 'Jawahar Jyoti' of Pathankote by one Shri Piara Lal Chopra to the effect that there was rampant use of unfair means by the candidates with the active connivance of the Centre Superintendent and other members of the supervisory staff in the Matriculation/Higher Secondary Examination held in the month of March, 1967; at Dera Baba Nanak Examination Centre. The University requested the Head Examiners to specially scrutinise the answer books of the candidates and to send their independent reports if they found any evidence of the candidates as to their having used unfair means. The Head Examiner in the Mathematics Paper 'A' suspected the petitioner as having used unfair means. The answer book of this candidate along with the answer books of the other candidates and the reports of the Head Examiner were referred to Shri R. D. Syal, Reader in Panjab University Mathematics Department for his opinion. His report was—

"Nos. 150413, 150414 and 150415 have in common solution to I(a)."

The petitioner was supplied copies of the reports of the Head Examiner and that of Shri R. D. Syal and was required to attend an enquiry at Dera Baba Nanak on 18th of August, 1967, so that he might explain his position in the light of charges levelled against him. He attended the enquiry at which he was supplied with a questionnaire to which he gave replies. He denied the charge levelled against him and pleaded not guilty. He was asked if he would like to appear before the Standing Committee but he answered in the negative. The Standing Committee which consisted of three members came to the conclusion that the petitioner was guilty of violating Regulation 13(b) of the Punjab University Calendar. The Committee observed:

"A thorough scrutiny of the answer book of Roll No. 150413 shows that while attempting Q. No. 1(a) he has made

tremendous mistakes and despite these mistakes he has reached the correct answer. For instance, he has written $505 \overline{10025}$ and $9 \overline{25}$ instead of $505 \overline{100}$ and 9×25 respectively. He has also missed some steps while solving the question and even then he arrives at the correct answer. However, his attempt to Q. No. 1(a) does not tally with either Roll No. 150414 or 150415.

In view of the facts stated above, it is quite evident that this candidate has copied his answer to Q. No. 1(a) from some where. I agree with the expert that the candidate has copied. Hence the candidate is guilty of violating Regulation 13(b)."

Regulation 13(b) is reproduced below in extenso:

"If an answer-book shows, or it is otherwise proved, that the candidate has received help from or given help to another candidate or if he is found copying or to have copied from any paper, book, or note, or to have allowed any other candidate to copy from his answer-book or to have taken the examination with notes written on any part of his clothing or body or table or desk or instruments (allowed in the Engineering examinations) like set-squares, protractors, slide rules, etc., or is guilty of swallowing or of destroying any note or paper found on him, or of consulting notes or books, while outside the examination hall during examination hours before he has handed over his answer-book 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."

Regulations 13(a) and 13(c) are admittedly not applicable to the case of the petitioner.

The relevant portion of Regulation 13(b) so far as applicable to the facts of this case is :—

"If an answer-book shows,.....that the candidate has received help fromanother candidate..... he shall

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be disqualified from appearing in any University Examination for two years,.....”

Question No. 1(a) with respect to which it was alleged that the petitioner has resorted to unfair means was from Algebra Paper and he was required to simplify an equation. After attempting three steps, he wrote down his answer as '2'. The conclusion is said to be correct but several more steps had to be taken and he could not arrive at the answer immediately from the steps that had been taken down. From his answer, it has been concluded that he did not arrive at it as a result of the steps he had taken but had copied this answer from somewhere. The suspicion of the University was aroused by a report in the newspaper to the effect that the supervisory staff was enabling the candidates to indulge in unfair means and this was being done with the active connivance of the Superintendent of the Centre and the other members of his staff.

On the material, it has not been suggested that he has copied it from the answer-book of any particular candidate or from any note-book. Obviously the answer could not be copied from those candidates whose Roll Nos. were 150414 and 150415, as they were sitting at the farthest end of the fourth row. All that the Standing Committee has observed is that “it is quite evident that this candidate has copied his answer to Q. No. 1(a) from somewhere” and, therefore, he has been held guilty of violating Regulation 13(b). Assuming this conclusion to be correct, it does not attract the provisions of Regulation 13(b). There is no suggestion that the petitioner was found copying or to have copied from any paper, book or note or from the answer-book of any other candidate. An inference has been drawn against him from his answer and, that has been deemed to be a sufficiently strong circumstantial evidence as to his guilt. But the guilt under Regulation 13(b) also lay if he had “received help, from.....another candidate.” but there is no finding to the effect. It is a significant omission in Regulation 13(b) that it does not assail receiving help from any source other than from another candidate. A help received from the supervisory staff or from an outside agency is not within the mischief of the provision and this is a serious lacuna. The language of Regulation 13(b) cannot be used for extending its scope. It is not possible for the Standing Committee or for this Court to construe Regulation 13(b) in a manner so as to, substitute the words “another candidate” by the word ‘somewhere’ or “anywhere”. This Court's function is to interpret the law and

to apply it. It cannot transgress the bounds of its function by supplying the gaps and thereby legislating.

Even assuming that somebody outside the hall loudly announced the answer or some one on the supervisory staff had told the answer, the hearers do not thereby become *particeps criminis*. Receiving help is a conscious and a voluntary act in pursuance of some attempt or effort. No examinee could help hearing the answer if it was uttered sufficiently loudly by one examinee to another.

Those who did not ask the answer could not be punished under Regulation 13(b) because they could not avoid hearing the answer being within ear-shot. A person can restrain himself from talking or from otherwise communicating, as these are voluntary acts and capable of being willed. But same is not true of acts of hearing which are effortless and therefore involuntary. A guilty mind is envisaged for punishing the candidate indulging in unfair means as specified in the Regulation. The Regulation is a penal measure and has to be construed strictly. No punishment can be awarded under this Regulation to a candidate who has received help from a source other than that of some candidate. Thus, I notice a lacuna which unwittingly provides a loophole, and a means of escape, in Regulation 13(b), which punishes receiving help from another candidate but not from the supervisory staff or any other person not being a candidate.

In the case of a candidate found 'copying', he is guilty whether he copies from the answer-book of another candidate or from any paper, book or note, but in the case of 'receiving help' the Regulation confines it to getting it from another candidate. Without doing palpable violence to the language of Regulation 13(b), I cannot, in the face of the undisputed facts and circumstances of the case, affirm the finding of the Standing Committee that "this candidate has copied his answer to Q. No. 1(a) from somewhere." In this case, there is no proof whatever that he "copied" his answer. He might have heard the answer. If he merely "heard" the answer and put it down on his answer-book, that would not be "copying", but "receiving help". The act of receiving help is confined to obtaining it from another candidate. Merely on hearing that "2" is the answer to the question, the candidates who write that answer, may not receive any marks if they omitted the necessary steps; they cannot be punished for contravening Regulation 13(b). In the context "copying" is distinct from "receiving help". Here the

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term "copying" means transcribing from another paper, book, etc. "Copying" means in this case, reproducing from another source. The word "copying", is also used in the sense of "duplicating" or "imitating". Therefore, there must be shown to be an original from which copy or transcription is made or duplicated. It, however, does not cease to be copying if the copy is not exact or it contains errors in transcription. In the instant case the petitioner could not copy from the answer-books of the candidates whose Roll Nos. were 150414 and 150415 as they were sitting at a distance at the other end of the examination hall. The Standing Committee has not been able to say from where the answer "2" has been "copied". It merely says from "somewhere". In the circumstances of the case, writing of the digit "2" as the answer to the question is not tantamount to "copying it even if it be assumed that this answer was over heard. It seems that the Standing Committee has committed an error in assuming that the candidate had "copied" his answer.

My attention has been drawn by the learned counsel for the Punjab University to a decision of the Division Bench reported in *Karamjit Kaur v. The Panjab University* (1), in which six principles had been laid down for dealing with questions of the use of unfair means by a student, by an educational Authority. I find myself in full agreement with what is stated in those principles but I cannot, by applying any of the six rules, justify the finding of the Standing Committee. Not one of these principles, can be applied with advantage on behalf of the University in order to uphold the finding against the petitioner.

My attention was also drawn to a decision of the Supreme Court in *Board of High School and Intermediate Education and another v. Bagleshwar Prasad and another* (2), that Courts should be slow to interfere with the decisions of domestic Tribunals appointed by educational bodies like the Universities and that in dealing with the validity of the impugned orders passed by the Universities under Article 226, the High Court is not sitting in appeal over the decision in question. Its jurisdiction is no doubt limited but can be exercised, if the impugned order is not supported by any

(1) 1964 P.L.R. 674.

(2) A.I.R. 1966 S.C. 875.

evidence at all. This conclusion has to be reached after considering the question whether probabilities and circumstantial evidence do not justify the said conclusion.

In this case, the points are not similar to those which came up for consideration before the Supreme Court. I have arrived at a finding different from that of the Standing Committee on the ground that their conclusion is otiose, and *de hors* the evidence. I further find, that the alleged misconduct is outside the pale of Regulation 13(b) which does not reach the unfair practice of receiving help from any where except from another candidate. The University in passing the order disqualifying the petitioner for a period of two years, acted in the absence of any evidence supporting the finding, that the petitioner copied his answer from somewhere.

For reasons stated above, the petitioner deserves to succeed. I, therefore, allow the petition and direct the University to declare the result of the petitioner. In the circumstances, there will be no order as to costs.

R.N.M.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

MALLU RAM,—*Petitioner*

versus

THE FINANCIAL COMMISSIONER,—AND OTHERS *Respondents*

Civil Miscellaneous No. 1058 of 1964

April 1st, 1968

Punjab Security of Land Tenures Act (X of 1953)—S. 24—Punjab Tenancy Act (XVI of 1887)—S. 88—Revision under S. 24 of Act X of 1953, dismissed in default by the Financial Commissioner—Whether can be restored by him—Constitution of India (1950)—Articles 226 and 227—Scope of—Distinction between the two stated..

Held, that the power of the Financial Commissioner in the matter of restoration of a revision petition under section 24 of the Punjab Security of Land Tenures