

FULL BENCH

Before Shamsher Bahadur, Prem Chand Pandit and P. D. Sharma, JJ.

KRISHAN KUMAR MALHOTRA,—*Petitioner.*

versus

THE PANJAB UNIVERSITY,—*Respondent.*

Civil Writ No. 342 of 1967.

August 24, 1967.

Panjab University Calendar (1964-65), Vol. I, Part D(ii)(a)—Regulations 12 and 13(b)—Interpretation of—Candidate found in possession of notes written on slide rules cover but not made use of—Whether punishable under regulation 12 or 13(b).

Held, that all the clauses of Regulation 12 refer to *mere possession* of the papers, books, or notes by the candidate in the examination hall. If the case is covered by clauses (a) and (d), then no action would be taken against the candidate. Clause (b) talks of innocent possession, while (c) of *mala fide* possession, that is to say, the candidate had taken those papers, etc., with the intention of using the material in the examination. In the former case, the candidate would not be allowed to pass in that particular paper, while in the latter, he would be disqualified for two years.

Held, that a fair reading of Regulation 13(b) shows that in the various contingencies contemplated by its sub-clauses the candidate will be held guilty only if he is found to have done some deliberate conscious overt act during the course of the examination and penalised for actual acts committed by him during the course of the examination before he handed over his answer book to the Superintendent. The words "to have taken the examination", when read in the context, mean that the candidate must have actually used or taken assistance of such notes during the course of the examination before he can be found guilty under this Regulation. When the finding is that the candidate did not make any use of the notes written on the slide rules cover found to be lying on his table during the examination, he cannot be disqualified for two years under Regulation 13(b) and his case will be covered by Regulation 12(b), if such possession was innocent and by Regulation 12(c), if the possession was *mala fide*.

Case referred by a Division Bench consisting of the Hon'ble Mr. Justice A. N. Grover and the Hon'ble Mr. Justice P. C. Pandit on 25th May, 1967 for decision of the important question of law involved in the case to a larger Bench.

The case was finally decided by the Full Bench consisting of the Hon'ble Mr. Justice Shamsher Bahadur, the Hon'ble Mr. Justice P.C. Pandit and the Hon'ble Mr. Justice P. D. Sharma.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the orders of the respondent disqualifying the petitioner for 2 years, i.e., November, 1965 to April, 1967, under Regulation 13(b) at page 104 of the Panjab University Calendar, Volume V, for the year 1964-65.

RAJINDER SACHAR, and MOHINDER JIT SINGH SETHI, ADVOCATES, for the Petitioner.

HANS RAJ SODHI, with N. K. SODHI and B. S. GUPTA, ADVOCATES, for the Respondent.

ORDER OF THE FULL BENCH

PANDIT J.—This petition, under Articles 226 and 227 of the Constitution, has been filed by Krishan Kumar Malhotra, and challenges the legality of the order, dated 7th February, 1967 passed by the Panjab University, disqualifying him for a period of two years under Regulation 13(b) given at page 104 of the Panjab University Calendar 1964-65 (Volume I).

The petitioner passed the Matriculation examination in the first division in 1959. He passed the B.Sc. examination in 1963, securing first division from the Delhi University. In August 1963 he joined the Punjab Engineering College at Chandigarh, where he passed the Ist year in April, 1964 and second year in April, 1965. In both the examinations he obtained about 75% marks and was placed amongst the first ten in the whole of the University. He was awarded Government of India merit-cum-means scholarship of Rs. 90 per mensem from the date of his joining the Engineering College. He was promoted to third year in April, 1965. On 30th of November, 1965, while he was appearing in the Hydraulic Machines paper for the Third Year (Engineering) Part I Examination, he was found in possession of a slide rules cover lying on his table at about 3.20 p.m. The paper had started at 1.30 p.m. Some formulae were written on the said cover. The Deputy Superintendent of the centre took into possession the slide rules cover and the answer book of the petitioner who was given a new continuing sheet to answer the remaining questions. The petitioner was then asked to make a statement and he told the Superintendent that he did not know that any formulae were written

Krishan Kumar Malhotra v. The Panjab University (Pandit, J.)

on the slide rules cover and that he had not written the same for the purpose of adopting unfair means in the examination. This matter was then reported to the University by the Superintendent of the Centre. On 18th of January, 1966 the Assistant Registrar of the Panjab University wrote a letter asking the petitioner to see him on 28th of January, 1966 in connection with the unfair means enquiry case pending against him under Regulations 12(c) and 13(b). The petitioner appeared before the Assistant Registrar on the said date, where he was given a questionnaire and was asked to give his answers thereto. The questionnaire contained all the allegations and the material available against the petitioner. The petitioner gave replies to the various questions and denied the allegations made against him. It appears that the University then sent the question paper, the answer book of the petitioner and the slide rules cover to Prof. J. N. Bhatnagar, Department of Chemical Engineering and Technology, for his expert opinion in the matter. He replied that the material written on the cover of the slide rules related to the paper in Hydraulic Machines but the petitioner had, however, not made use of it. On 12th of February, 1966, the Registrar of the Panjab University, who is also one of the members of the Standing Committee appointed by the University for dealing with the cases of alleged use of unfair means, prepared a note in which the entire history of the petitioner's case along with his opinion and reasons therefor were given. His recommendation was that the petitioner be disqualified for a period of two years i.e. November, 1965 to April, 1967 (four sessions) under Regulation 13(b). When this note was placed before Bakshi Sher Singh, another member of the Standing Committee, he was of the opinion that the fact that there were some writings previously also on the slide rules cover but which were rubbed off and that the present incriminating material was definitely written for the purpose of using it in the examination had not been put to the petitioner on 28th January, 1966. He, therefore, on 14th February, 1966, wrote that the petitioner should be summoned and examined on this point. Pursuant to the observations made by Bakshi Sher Singh, the petitioner was again sent for on 28th February 1966 by a registered letter dated 17th February, 1966. According to the University, the petitioner received that letter as was evident from the acknowledgment due receipt, but he neither turned up on that date nor sent any communication. Thereupon, on 11th March, 1966 the Registrar reiterated his previous recommendation which was agreed to by the other members of the Standing Committee, namely, Bakshi Sher Singh and Mr. G. L. Chopra. On 21st March, 1966, the petitioner was disqualified for two years i.e. November, 1965 to April, 1967 under Regulation 13(b).

Aggrieved by this decision the petitioner filed a writ petition in this Court (C.W. No. 689 of 1966). The same came up for hearing before Kaushal, J. on 18th November, 1966. The learned Judge was of the view that proper opportunity had not been granted to the petitioner before the order dated 21st March, 1966 was passed, inasmuch as it had not been conclusively proved that the letter of the Panjab University dated 17th February, 1966 calling upon the petitioner to attend the office of the University on 28th February, 1966 had been received by him. He consequently, accepted the writ petition, set aside the order disqualifying the petitioner and directed the University authorities "to give one more opportunity to the petitioner to place his case before them as was contemplated when the letter of 17th February, 1966, was issued to him." The petitioner was then again called by the University on 16th December, 1966, when another questionnaire was handed over to him in order to give him an opportunity to explain the circumstances for rubbing off some of the writings and making new ones on the slide rules cover. The petitioner gave his replies to the questions. Thereafter, a note regarding this case was prepared by the Assistant Registrar on 26th December, 1966. In the ultimate paragraph of the said note, it was written as under :—

"In view of the facts stated above, the case is re-submitted to the members of the Standing Committee for reconsideration, in the light of the orders of the High Court, to record their opinion if :—

- (i) the decision already taken in this case may stand; or
- (ii) the plea of inadvertence put forth by the candidate again on 16th December, 1966, be relied upon.

In case of alternative (ii) above the candidate is debarred from passing in that paper as a disciplinary measure without any implication of moral turpitude under regulation 12 (b) at pages 103-104 of the Panjab University Calendar, 1964-65, Volume I (operative at the time when the cause of action arose.)"

When this note was placed before the Registrar, he, on 28th December, 1966, wrote that the case might be put up before a meeting of the Standing Committee. The said meeting took place on February 7, 1967, when the impugned decision was taken, which runs as under:—

"The case of candidate Krishan Kumar Malhotra, Roll No. 317, 3rd Engineering Part I Examination November, 1965,

Krishan Kumar Malhotra v. The Panjab University (Pandit, J.)

was reconsidered by the Committee. All the facts of the case and the decision of the Punjab High Court on the writ petition filed by Shri Krishan Kumar Malhotra along with the answers given by him to the questionnaire given to him in the office on 16th December, 1966, were placed before the Committee. The Committee decided that its earlier decision to disqualify the candidate for a period of two years, under regulation 13(b) given at page 104 of the Panjab University Calendar, 1965 (Volume I), should stand."

This decision was conveyed to the petitioner by means of a letter dated 16th February, 1967 issued by the University. That led to the filing of the present writ petition.

This petition originally came before Grover, J. and myself. Before us, the validity of Regulation 13(b) in so far as it provided that if a candidate had taken the examination with notes written on instruments (allowed in the Engineering examination) like slide rules, etc. he would be disqualified for two years, was challenged on various grounds. Another highly debatable point which was canvassed before us was whether on the facts and circumstances of this case, the petitioner could be awarded the punishment provided for in Regulation 13(b) or whether his case would be covered by Regulation 12. One other contention raised was that inasmuch as the decision of the Standing Committee was not a speaking order, it was liable to be struck down in accordance with the latest pronouncement of the Supreme Court in *Bhagat Raja v. The Union of India and others* (Civil Appeals Nos. 2596 and 2597 of 1966), decided on 29th March, 1967. In our opinion, all these questions were not only important but also their decision was likely to affect other similar cases which might be pending or which might arise in future. We, consequently, referred the case to the Full Bench. That is how the matter has come before us.

The following two contentions had been raised before us by the learned counsel for the petitioner:—

- (i) that on the facts proved in the instant case, no action could have been taken against the petitioner under Regulation 13(b) ; and
- (ii) that the Standing Committee was a quasi-judicial tribunal and its order had, therefore, to be a speaking one. That

being not so in the instant case, it was liable to be struck down on that ground alone.

The facts are now no longer in dispute. The petitioner was appearing in the Hydraulic Machines paper when the slide rules cover with certain formulae written on it was lying before him on the table. The material written on the cover related to the paper in Hydraulic Machines, but the petitioner had not made any use of the said material while answering the paper. The question for consideration is whether, under these circumstances, he could be disqualified under Regulation 13(b). It is common ground that the University had, in the beginning, charged him under both Regulations 12 (c) and 13(b), but subsequently the Standing Committee took action under the latter Regulation. Regulations 12 and 13 are as under:—

- “12 (a) If a candidate is found having in his possession or accessible to him papers, books or notes, which do not relate to the subject of examination and which could not possibly be of any assistance to him, no action may be taken against him. But the case must be reported to the Registrar with necessary papers. The Registrar need not report such a case to the Sub-Committee.
- (b) If a candidate is found having in his possession or accessible to him papers, books or notes due to inadvertence but which papers, books or notes could be of assistance to him, he may be debarred from passing in that paper as a disciplinary measure without any implication of moral turpitude.
- (c) If his possession of such papers, books, or notes is found to be *mala fide* he shall be disqualified for two years including that in which he was found guilty if he is a candidate for an examination held once a year or for four examinations including that in which he was found guilty, if he is a candidate for an examination held twice a year.
- (d) If a candidate voluntarily surrenders to the Superintendent during the course of examination papers, books or notes left in his possession due to inadvertence and not found or detected by a member of the Supervisory staff, no action may be taken against him, provided he has not

Krishan Kumar Malhotra v. The Panjab University (Pandit, J.)

made any use of them. But the case shall be reported to the Registrar.

- 13 (a) If a candidate is found talking to another candidate or any person inside or outside the examination hall, during the examination hours, without the permission of a member of the supervisory staff before he has handed over his answer-book his answer book for that particular paper shall be cancelled.
- (b) 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, protractor, 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.
- (c) (i) A candidate who, during the examination, writes either on blotting paper or on any other piece of paper a question set in the paper or a solution thereof, shall be disqualified for one year.
- (ii) A candidate found guilty of passing on, during the examination, a copy of a question set in the paper or a solution thereof to any one shall be disqualified for two years including that in which he is found guilty.
- (iii) A candidate found in possession of a solution to a question set in the paper through connivance of any member of the supervisory or menial staff or some outside agency shall be disqualified from appearing in any University examination for three years. Also the person rendering such help shall be disqualified from appearing in any University examination for a period of three years and/

or shall also be liable to such other punishment as the Vice-Chancellor may decide.

- (iv) A candidate found guilty of having made previous arrangement to obtain help in connection with the question paper but who is not covered by (i), (ii) or (iii) above, shall be disqualified from appearing in any University examination for three years. The person with whom previous arrangement is made by the candidate shall also be disqualified from appearing in any University examination for a period of three years and/or shall also be liable to such other punishment as may be decided by the Vice-Chancellor."

Regulation 12 deals with four types of situations. According to clause (a), if the candidate is found to have in his possession or accessible to him some papers, books or notes *which did not relate to the subject of examination* then no action would be taken against him. The case, however, would be reported to the Registrar. Clause (b) provides for the case of a candidate who is found having in his possession or accessible to him papers books or notes *which could be of assistance to him* in the examination but *which he had taken with him inadvertently*, then he would be debarred from passing in that paper as a disciplinary measure without any implication of moral turpitude. Then we come to clause (c), according to which if the possession of such papers, books or notes is *mala fide*, he would be disqualified for two years. Clause (d) refers to a contingency when the candidate *voluntarily surrenders* to the Superintendent of the Centre such papers, books or notes which he had taken with him due to inadvertence, but were not found or detected by any member of the supervisory staff. In such a case no action would be taken against him provided, of course, he had not made any use of them. The case, however, shall be reported to the Registrar. Thus, it would be seen that all these clauses refer to *mere possession of the papers, books or notes by the candidate in the examination hall*. If the case is covered by clauses (a) and (d), then no action would be taken against the candidate. Clause (b) talks of innocent possession while (c) of *mala fide* possession, that is to say the candidate had taken those papers, etc. with the intention of using the material in the examination. In the former case, the candidate would not be allowed to pass in that particular paper, while in the latter, he would be disqualified for two years. There was virtually no difference of opinion between the counsel for the parties regarding the above interpretation of the various clauses of Regulation 12.

Krishan Kumar Malhotra v. The Panjab University (Pandit, J.)

Coming to Regulation 13, its clause (a) provides that if the candidate is found talking to another candidate or any other person either inside or outside the examination hall, without the permission of any member of the supervisory staff, during the time the examination was going on and before he had handed over his answer book, then in that case, his answer book for that paper would be cancelled.

Now let us examine clause (b) about the interpretation of which there was a lot of controversy between the parties. This clause, I must confess is not very happily worded. When analysed, it contemplates three main contingencies and it would read like this—

- (1) If the answer-book shows, or it is otherwise proved, that the candidate has received help from or given help to another candidate,
- (2) or if he is found—
 - (i) copying or to have copied from any paper, book or note,
 - or (ii) to have allowed any other candidate to copy from his answer book,
 - or (iii) to have taken the examination with notes written on any part of his clothing or body or table or desk or instrument (allowed in the Engineering examinations) like set squares, protractors, slide rules, etc.
- or (3) (if he) is guilty—
 - (i) of swallowing or of destroying any note or paper found on him,
 - or (ii) 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.

According to the learned counsel for the University the instant case was covered by contingency 2 (iii) above, because the petitioner was found to have taken the examination with notes written on the slide rules cover. On the other hand, the learned counsel

for the petitioner contended that this Regulation had nothing to do with the case in hand, inasmuch as the petitioner was not found to have taken the examination with the notes written on the slide rules cover. According to him, in order to bring the case of the petitioner within this Regulation it was necessary to show that the petitioner had *actually made use* of the material written on the slide rule cover in the examination. Since there was a definite finding by the University expert that although the material related to the Hydraulic Machines paper, but it *was not made use of* by the petitioner, the impugned order was liable to be set aside. To have taken the examination with notes written on the slide rules cover, according to the petitioner's counsel, meant that the petitioner did use that material during the course of the examination.

The position taken by the learned counsel for the University was that Regulation 13 (b) was more specific and the possession of notes written on any part of the clothing or body or table or desk or instruments like slide rules, etc. was only dealt with in this Regulation and not in Regulation 12 which was more general and provided for possession of papers, books or notes except the notes written on various things mentioned in Regulation 13 (b). It was nowhere mentioned that the candidate must have actually made use of the said notes. Mere possession of such notes, according to him, was sufficient to bring the case within Regulation 13 (b). The words 'to have taken the examination with notes.....' did not mean that the candidate must have utilised these notes while answering the question paper. It cannot be denied, argued the counsel, that in the instant case the petitioner had taken the examination with notes written on the slide rules cover.

A fair reading of Regulation 13 (b) would show that in the first contingency the answer book must show or it should be otherwise established that the candidate had either received help or had given help to another candidate during the course of the examination. In other words, while taking the examination the candidate had by some conscious overt act either helped some other candidate or had obtained help from him. The second contingency talks of three situations. The first is when the candidate is found actually copying from some other candidate or to have copied from some paper, book or notes. Again there is deliberate act on his part which was done during the course of the examination. In the second, the candidate is found to have allowed any other candidate to copy from his answer book. This again contemplates a conscious act on his part in allowing some other candidate to copy from his

Krishan Kumar Malhotra *v.* The Panjab University (Pandit, J.)

answer book during the course of the examination. Leaving the third situation, with which we are concerned in this case, for the time being, let us go to the third contingency mentioned in this Regulation. This again talks of two situations. In the first, the candidate must be guilty of either swallowing or destroying any note or paper found in his possession. It will be seen that here again the candidate must actually swallow or destroy any note or paper which was with him, which obviously must be of some incriminating nature. In the second situation, he must be guilty of consulting notes or books, outside the examination hall, during the time when the examination was going on and before he had actually handed over his answer book. In this case also, the candidate must actually be consulting the notes or books. It will therefore, be seen that in all the contingencies which were referred to in Regulation 13 (b), leaving of course, the third situation in the second contingency for the time being, the candidate was guilty of some deliberate conscious overt act which was done by him during the course of the examination and it was then that he was punished under that Regulation. The candidate is, thus, penalised for actual acts committed by him during the course of the examination before he had handed over his answer book to the Superintendent.

Now coming to the third situation in the second contingency, the language employed therein is that the candidate should be found to have taken the examination with notes written on the various things mentioned in the said Regulation. Does it only mean that the candidate should merely be in possession of such notes or should he actually make use of them during the course of the examination? During the arguments, our attention was invited to the definition of the word 'take' which meant, *inter alia* 'to use', 'to employ' to resort to'. But the counsel were unable to point out the meaning of the phrase 'to have taken the examination' which was used in this Regulation. It might perhaps be argued with some justification that in the broader sense it could be said that the petitioner was found to be taking the examination with the notes written on the slide rules cover, since he was in possession of these notes when he was actually answering the question-paper. But is it in that sense that the words 'to have taken the examination' have been used in this Regulation? I have already said that in all the contingencies contemplated by Regulation 13(b), there was some deliberate, conscious overt act on the part of the candidate during the course of the examination. The words 'to have taken the examination', when read in the context, would, in my opinion, mean that the candidate must have actually used or taken assistance of such

notes during the course of the examination, before he can be found guilty under this Regulation. Such an interpretation would be more in harmony with the other situations contemplated in this Regulation. It is not understandable that if in all the other situations referred to in this Regulation, whether before or after the one in dispute, the University authorities were thinking of punishing the candidate *for something actually done by him*, deliberately and consciously during the course of the examination, then why should they think of punishing him only for possession of notes written on the various things mentioned in this Regulation, especially when Regulation 12 provided for all kinds of possessions (of notes), both innocent as well as *mala fide*. It cannot be legitimately argued that notes written on any part of the clothing, etc. would not be covered by the word 'notes' used in Regulation 12. If somebody writes notes on a part of his clothing or some instrument or table or desk, they nonetheless remain 'notes' and do not cease to be so. It also cannot be argued with any justification that if some candidate writes notes on a table or desk or clothing or slide rules cover, then he cannot be said to be in possession of those notes, as was suggested by the learned counsel for the respondent University. The table, the desk or the clothing, would be, at the time when he was taking the examination, naturally in his possession or under his control and he could certainly make use of the notes written on those things. It is also difficult to comprehend that if a candidate was inadvertently in possession of some notes relating to the subject in which he was being examined on a particular date, his case would be covered by Regulation 12 and he would be merely debarred from passing in that paper, but if he was in possession of notes written on slide rules cover, even though they did not relate to the subject of the examination, he would be disqualified from appearing in any examination for two years, as was in fact argued by the learned counsel for the respondent. That also shows that the makers of the Regulations thought that the candidate must make use or take the assistance of the notes written on the slide rules cover, before he could be disqualified for two years under Regulation 13(b). If such notes were not made use of by the candidate and he was merely in possession thereof, then his case would, in my opinion, be covered by Regulation 12(b), if such possession was innocent and by Regulation 12(c), if the possession was *mala fide*. It may be mentioned that Regulation 13(c)(i) to (iv) also seem to contemplate situations, where the candidate had actually done some deliberate conscious overt act during the course of examination, but it is not necessary to give a considered opinion on this point in the present case, since we are not concerned with that matter.

Krishan Kumar Malhotra v. The Panjab University (Pandit, J.)

Since it has been found in the instant case by the University expert that the petitioner had not made any use of the notes written on the slide rules cover, he could not, in my opinion, be disqualified for two years under Regulation 13(b) as was done by the University.

In this view of the matter, it is not necessary to decide the second contention of the learned counsel for the petitioner that the impugned order passed by the University was not a speaking one.

In the result, I would accept this petition, quash the impugned order and direct the University to declare the petitioner's result. There will, however, be no order as to costs.

SHAMSHER BAHADUR, J.—I agree with the conclusion reached by Pandit, J., that the petition should be allowed and the disqualification imposed under Regulation 13(b) quashed. All that has been established against the petitioner is that the few lines of some formulae written on the cover of the slide rule related to the subject of Hydraulic Machines. Concededly no use had been made of this material according to the opinion of the University expert. The slide rule cover was lying open and unconcealed on the desk of the examinee petitioner at 3.20 p.m., nearly two hours after commencement of the examination in the paper of Hydraulic Machines. Plainly, the possession of the 'notes' was innocent and the 'inadvertence' which is the keynote of Regulation 12(b) would attract its application to the case in point. There is no conceivable reason why a simple case of innocent possession should be permitted to be intermingled with the various clauses of Regulation 13(b), as these deal with situations which, as pointed out by Pandit, J., are the outcome of a deliberate and conscious mind only of a delinquent examinee and call for harsher punishment. The phrase "taken the examination" both in its connotation and collocation has to receive light and meaning from the context and setting of Regulation 13(b) which has been subjected to a careful analysis by Pandit, J. There is no room to construe the words "taken the examination" as an expression for being found in mere possession of the "notes" on the slide rule cover at the time of examination when the indisputable facts clearly place the matter within the scope and ambit of Regulation 12 (b).

P. D. SHARMA, J.—I agree with Pandit, J. and have nothing to add.

B.R.T.