evident that neither the private respondents possesses special knowledge in the field of municipal administration nor do they possess any experience in the municipal administration and on its part, the Government did not at all apply its mind while nominating them to the municipal committees. The material placed before us shows that the persons whose duty is to apprise the Chief Minister of the requirements of law as well as the qualifications and experience of the persons to be nominated has singularly failed in their duty. This has resulted in nomination of those persons who did not fulfil the basic requirement of law.

(21) The underlying object of Article 243-R of the Constitution and Section 9 (3) of the Act is to confer power upon the Government to nominate some persons who are specialist in the field of municipal administration. Such persons may not like to contest the election but they can still be made members of the municipal committees so that Local Government Administration is benefitted by their specialised knowledge or experience in the field of municipal administration. This object has been singularly defeated by the impugned notification.

(22) For the reasons mentioned above, we allow both the writ petitions and quash the impugned notification nominating respondents 3 to 5 in C.W.P. No. 6226 of 1995 and respondent No. 3 in C.W.P. No. 3874 of 1995 to Municipal Committee, Buria, Tehsil Jagadhari, District Yamuna Nagar, and Municipal Committee, Punhana, District Gurgaon, respectively. These respondents shall cease to be the members of the Municipal Committees, henceforth. The petitioner shall get costs of Rs. 5,000 in both the petitions.

J.S.T.

Before Hon'ble R. P. Sethi & K. S. Kumaran, JJ.

ASHWANI KUMAR & OTHERS,—*Petitioners.*

versus

PUNJABI UNIVERSITY, PATIALA & ANOTHER,—*Respondents.*

C.W.P. No. 9761 of 1995

19th October, 1995

Constitution of India, 1950—Art. 226/227—Punjabi University Calender, 1987—Ordinance 14—Disqualification—Candidate disqualified from appearing in university examination for 2 years by Committee after being afforded a hearing—Whether such punishment excessive—Matter remanded back to Committee for reconsideration.

Held, that a perusal of Ordinance 14 shows that the Committee had the option and discretion to disqualify the student upto two years and there did not exit any restriction to disqualify such student for a minimum period of two years. The words 'may' and 'upto' used in the aforesaid Ordinance are significant and intended to achieve the object of giving appropriate punishment to the erring students within the limits prescribed in the Ordinance. In view of this proposition of law, it cannot be said that the Committee could not award a lesser punishment to the petitioners.

(Para 10)

Further, that the petitioners might have transgressed the limits, due to which the Committee debarred them from appearing in the examination for two years under provisions of Ordinance 14. But the ends of justice would have been met if the petitioners were deprived of appearing in one examination only. We are, however, not inclined to decrease the punishment, as imposed by the Committee and would prefer to send the case back to the Committee for reconsideration thereof in view of our aforesaid observations.

(Para 16)

Constitution of India, 1950—Arts. 226/227—Punjabi University Calender, 1987—Ordinance 14—Words 'may' and 'shall'—Interpretation.

Held that, this Court in Mohinder Lal Jain *versus* Vice-Chancellor, Panjab University, 1966 PLR 735, while dealing with the Regulation pertaining to the Panjab University Calandar held that the mere use of the word 'shall' in the Regulation did not prevent the University in using its discretion to give lesser punishment if it otherwise chose to do so. 'Shall' in the context in wihch the word is used in the Regulation really means 'may' and a discretion vests in the University to reduce the punishment if the authorities think fit.

(Para 14)

Further held, that the word 'shall' if any used in the Calendar of University, shall be deemed to be directory and shall mean 'may' under the context and circumstances.

(Para 15)

P. S. Patwalia, Advocate, *for the Petitioners.*

Kanwaljit Singh, Advocate *for Respondents No. 1 and 2.*

JUDGMENT

R. P. Sethi, J.

(1) The petitioners, who were doing their two years Diploma course in D-Pharma at S. D. College, Barnala, appeared in their first year examination held by the Punjabi University. During the

examination, the Flying Squad is alleged to have been regularly visiting the College but did not notice any untoward incident about mass copying by the students. After the examination was over in November, 1994, the petitioners appeared in practical examination in January, 1995, and started waiting for the result. They had also deposited the fees for the second year in the College amounting to Rs. 7,500 per student. However, on April 3, 1995, the result of all the students was declared as RL/UMC, meaning thereby "the result later due to Unfair Means case". The petitioners are stated to have received letters from the Unfair Means Committee (hereinafter referred to as "Committee"), asking them a question as to whether they were copying during the course of examination or not. The charge was denied. Ultimately the respondents decided to debar all the petitioners from appearing in the examination upto December, 1996. They are further alleged to have approached the respondents for disclosing the grounds on the basis of which they were debarred from appearing in the examination for the said period, but no reply was given to the petitioners. Action of the respondents is alleged to be against the provisions of law and contrary to the orders and directions, governing the holding of examination and declaring the students ineligible for the future examinations.

(2) In reply filed on behalf of the respondents, it is submitted that since the petitioners have not approached the Court with complete facts, they were not entitled to the grant of relief prayed for. It is further submitted that the petitioners were given due opportunity of hearing before passing the impugned orders. It is further contended that under Ordinance 14 of the Punjabi University Calender, the petitioners were disqualified from appearing in any University examination for a period of two years on the ground that they had disclosed their identity to the examiners. It is alleged that as per Ordinance 14, the examiners evaluating the answer-books in the subject of Organic Chemistry and General Chemistry had made a written complaint that the candidates had answered the questions word for word the same and were thus guilty of mass copying. All the candidates appeared before the Committee. Their answer books were compared and the Committee came to the conclustion that the guilt of some of the candidates was not proved. After giving benefit of doubt, 17 candidates were allegedly acquitted from the punishment, whereas 61 candidates, including the petitioners, were disqualified. The petitioners had, in fact, appeared before the Committee on 26th April, 1995, 27th April, 1995, 2nd May, 1995 and 4th May, 1995 to defend themselves. The petitioners cannot have any grouse against the impugned orders, which have been

passed in accordance with the Ordinance and after compliance of principles of natural justice.

(3) We have heard learned counsel for the parties and have perused the record.

(4) It has been argued on behalf of the petitioners that the Committee was not justified in passing the impugned orders, by which the petitioners were disqualified from appearing in any University examination for a period of two years, as according to them no sufficient evidence was produced before the Committee to justify such a conclusion. It is further contended that the evidence, if any, had not been recorded in presence of the petitioners, thus, violating the principles of natural justice. In support of his submission, learned counsel for the petitioners has relied upon the judgment in *Maharashtra State Board of Secondary and Higher Secondary Education* v. *K. S. Gandhi and others* (1). The reliance is misplaced inasmuch as in that case the Supreme Court did not contemplate the holding of any enquiry in a case of unfair means, but only stressed the need that, "the principles of natural justice or fair play does require recording of reasons as a part of fair procedure. In an administrative decision, its order/decision itself may not contain reasons. It may not be the requirement of the rules, but the least, the record should disclose reasons". To arrive at the cnoclusion, the Supreme Court relied upon its earlier decision in *S. N. Mukherjee* v. *Union of India* (2), wherein it was held :—

> "Except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision."

It was further held :—

> "It is not required that the reasons should be as elaborate as in the decision of a Court of law."

The Supreme Court held that the extent and the nature of the reasons would depend on particular facts and circumstances. What

(1) J.T. 1991 (2) S.C. 296.
(2) J.T. 1990 (3) S.C. 630.

was required under law, was to ascertain as to whether the authority had given due consideration to the point in controversy. Elaborating the principles of natural justice, the Supreme Court held in *Maharashtra State Board's case*, :

> "From this perspective, the question is whether omission to record reasons vitiates the impugned order or is in violation of the principles of natural justice. The omnipresence and omniscience of the principle of natural justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a straight jacket formula as an abstract proposition of law. It depends on the facts of the case nature of the enquiry and the effect of the order/decision on the rights of the person and attendant circumstances."

(5) In the case before the Supreme Court, it was found from the record that all the students therein had admitted the factum of fabrication and it was to their knowledge that the subject in which fabrication was committed, belonged to them. In view of these admissions, the Enquiry Officer obviuosly did not find it expedient to reiterate all the admissions made. The Court found that where the facts are not disputed, the Enquiry Officer, on consideration of the material on record, should record reasons in support of the conclusions reached.

(6) In the instant case, the petitioners have not disputed the correctness of the question papers attributed to them. It is also not disputed that they were afforded the opportunity of hearing before the Committee, the Committee thereafter delibrated upon the issue and passed detailed orders assigning reasons. It has been held by the Committee :—

> "Ramil Kumar and Amardeep Singh appeared before the Committee. Files of both the candidates were looked into. The examination held on 31st October, 1994 in S. D. College. Barnala, regarding question No. I the answer given by the candidates are word for word similar, to the extent that even the mistakes made are also the same in both the cases. The candidates were asked questions by the committee and no one could give the correct answer. The paper held on 2nd November, 1994 regarding questions No. 4, 8, 3 (a) and 7 the answers are word for word

similar. Therefore, the Committee has come to the conclusion that the charge under Ordinance 14 stands approved. However, the committee concludes that as per the record presented by the office the charge under the Ordinances 20, 21, 22, 1, 22.2, 38 and 40 is not proved. The committee debarred the candidates from appearing in the University examination under Ordinance 14 for 2 years each."

(7) The Committee, which consisted of a Retired Judge of this Court and two other responsible Officers, is proved to have elaborated upon the issue before arriving at the conclusion regarding guilt of the petitioners. Even though the petitioners were earlier charged of having violated the Ordinances 20, 21, 22.1, 22.2, 38 and 40, yet upon hearing them, the Committee found them guilty of violating Ordinance 14 only. It cannot be said that the Committee had not applied its mind to the facts of the case and has not assigned any reasons.

(8) Alternatively, it has been prayed on behalf of the petitioners that even if the conclusions arrived at by the Committee are held to be in accordance with the provisions of law and the Ordinance applicable in the case, the punishment awarded to the petitioners was excessive and disproportionate to the charges levelled against them.

(9) Learned counsel for the respondents has submitted that in view of the provisions of Ordinance 14, the Committee was left with no option except to pass the orders disqualifying the petitioners for a minimum period of two years from appearing in any examination of the University. The respondents have reproduced Ordinance 14 in their reply, which reads as under :—

"If a candidate is found copying or his answer book shows or it is otherwise established :—

(a) That he has copied or taken help from any papers, books, note, answer-book or any other source in any manner during the examination or at any time thereafter, or

(b) that he has allowed another candidate to copy from his answer-book or ;

(c) that he has received help from or given help to another candidate, or

(d) that during an examination a candidate has exchanged his answerbook or a part thereof with another candidate.

He may be disqualified from appearing in any University examination upto 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."

(10) A perusal of the aforesaid Ordinance (14) shows that the Committee had the option and discretion to disqualify the student upto two years and there did not exist any restriction to disqualify such student for a minimum period of two years. The words 'may' and 'upto' used in the aforesaid Ordinance are significant and intended to achieve the object of giving appropriate punishment to the erring students within the limits prescribed in the Ordinance. In view of this proposition of law, it cannot be said that the Committee could not award a lesser punishment to the petitioners.

(11) Assuming but not admitting that for the word 'may' there existed the word 'shall', it would not change the position inasmuch as the words have to be interpretted in the context and under the scheme, they are used. In *Collector of Monghyr & others* v. *Keshav Prashad Goenka and others* (3), the Apex Court observed :—

"The question whether any requirement is mandatory or directory has to be decided not merely on the basis of any specific provision which, for instance, sets out the consequences of the omission to observe the requirement, but on the purpose for which the requirement has been enacted, particularly in the context of the other provisions of the Act and the general scheme thereof. It would, *inter alia*, depend on whether the requirement is insisted on as a protection for the safeguarding of the right of liberty of person or of property which the action might involve. The

(3) A.I.R. 1962 S.C. 1694.

employment of the auxiliary verb "shall" is inconclusive and similarly the mere absence of the imperative is not conclusive either."

(12) Mere use of the word "shall", torn from its context, cannot make the provisions of that section obligatory and imperative. No general rule can be laid down as to whether a provision in a statute is imperative or mere directory. This has been authoritatively held.

(13) While dealing with the meaning of the word "shall", the Supreme Court in *Raza Bulland Sugar Co. Ltd., Rampur* v. *The Municipal Board, Rampur* (4), held as under :—

"The question whether a particular provision of a statute which on the face of it appears mandatory-inasmuch as it uses the word "shall" as in the present case-or is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the Legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory."

(14) This Court in *Mohinder Lal Jain* v. *The Vice-Chancellor, Panjab University* (5), while dealing with the Regulation pertaining to the Panjab University Calendar held that the mere use of the word "shall" in the Regulation did not prevent the University in using its discretion to give lesser punishment if it otherwise chose to do so. "Shall" in the context in which the word is used in the Regulation really means "may" and a discretion vests in the University to reduce the punishment if the authorities think fit. In that case, the Court held :—

"It is a matter of great regret that Regulation 12 (b) does not

(4) A.I.R. 1965 S.C. 895.

(5) 1966 P.L.R. 735.

prima-facie appear to leave any discretion in the University authorities as to the quantum of punishment. In a case like this, where the career of a candidate had been brilliant and for reasons which are difficult to guess he some how seems to have stooped down in some weaker moment to the alleged unfair means adopted by him, surely some lesser punishment should be deemed to be adequate. The word "shall" in Regulation 12 (b) has been interpretted by the University to restrict in its power as to the quantum of punishment the University can inflict. The mere use of the word "shall" should not have prevented the University in using its discretion to give lesser punishment if it otherwise chose to do so. "Shall" in the context in which the word is used in Regulation 12 (b) quoted above, really means "may", and a discretion vests in the University to reduce the punishment inflicted on the petitioner if the University authorities otherwise think it a fit case for adopting that course."

(15) Similar view was taken by this Court in another case, *Miss Arpana Sharma* v. *State of Punjab and others* (6). We agree with the earlier view taken by this Court and hold that the word "shall" if any used in the Calender of the University, shall be deemed to be directory and shall mean "may" under the context and circumstances.

(16) In view of the facts of the case, we are of the view that the Committee been conscious that they had discretion to reduce the punishment it would not have disqualified the petitioners for a period of two years, as has been done—*vide* the impugned orders passed against them. The petitioners have been held guilty of mass coyping alongwith others and even though 17 students, who were similarly situated, were dealt with leniently and acquitted of the charge. The petitioners might have transgressed the limits, due to which the Committee debarred them from appearing in the examination for two years under provisions of Ordinance 14. But the ends of justice would have been met if the petitioners were deprived of appearing in one examination only. We are, however, not inclined to decrease the punishment, as imposed by the Committee and would prefer to send the case back to the Committee for reconsideration thereof in view of our aforesaid observations. It would be

(6) 1992 (4) S.L.R. 238.

appreciated if the petitioners are given an opportunity to become good citizens, by providing them immediate chance of appearing in the examination, and not spoiling their career any more. We also hope that the Committee would see the desirability of allowing the petitioners to appear in the next examination being held by the respondent-University. The Committee may also re-examine the cases of other students, who have not approached this Court, but who prefer to make representation to the respondents within a period of two weeks. Such representations, if any made, shall be disposed of by passing appropriate orders. Dasti.

J.S.T.

Before Hon'ble M. S. Liberhan & M. L. Koul, JJ.

TEJA SINGH & OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB & ANOTHER,—*Respondents.*

C.W.P. No. 3196 of 1995

27th November, 1995

Constitution of India, 1950—*Arts.* 226/227—*Land Acquisition Act,* 1894—*Ss.* 11, 11-*A*, 17—*Uurgency provisions invoked—Possession taken—*80 *per cent of compensation paid at the time of taking possession—Award under S.* 11-*A after a period of* 2 *years from S.* 6 *notification—Delay in making award not to vitiate proceedings.*

Held, that the title remains with the owners till the award is pronounced under Section 11 of the Act, while in case of invoking of provivisions of Section 17 (1) of the Land Acquisition Act, it comes to end when the possession is taken and the property vests in the State free from encumbrances. Thus. where the urgency provisions are invoked, the provisions of Section 11-A of the Act would not be attracted.

(Para 6)

Consitution of India, 1950—*Arts.* 226/227—*Land Acquisition Act,* 1894—*S.* 11—*Sanction of State Government—Under section* 11 *not sought—Non-compliance of provision of S.* 11 *would not render award non-est when* post facto *approval sought and land already stands vested with State Government.*

Held, that non-compliance of the provisions of Section 11 while pronouncing the award would not render the award as non-est