FULL BENCH

LETTERS PATENT APPEAL

Before Prem Chand Jain, S. C. Mittal and A. S. Bains, JJ.

KURUKSHETRA UNIVERSITY,—*Appellant.*

versus

VINOD KUMAR,—*Respondent.*

Letters Patent Appeal No. 639 of 1975

October 21, 1976.

Constitution of India 1950—Article 226—Orders of Domestic tribunals—Scope of interference with—Stated—Committee finding an examinee guilty of use of unfair means—Finding by the Committee about the mode of such means—Whether necessary.

Held, that the scope of interference under Article 226 of the Constitution of India 1950 with the decisions of a domestic tribunal like an unfair means Committee set up by an educational institution is limited and normally it is within the jurisdiction of such domestic tribunals to decide all relevant questions in the light of the evidence adduced before them. In dealing with the validity of the orders of such tribunals under Article 226, the High Court would be justified to quash them if they are not supported by any evidence at all. To determine whether a case is of no evidence at all, the Court is required to examine the whole case as considered and decided by the Tribunal and even in so doing, the court has not to sit in appeal over the impugned decisions. Even though the Court may have before it the record of proceedings conducted by the tribunal and other relevant material, it will be under a big handicap in deciding the case since it will have absolutely no means to know the demeanour of persons who appeared before the tribunal and the impression they created on the minds of its members.

(Paras 3, 9 and 13).

Held, that the fact that the impugned decision of an Unfair Means Committee holding guilty an examinee of resorting to use of unfair means, does not repeat the mode in which such means were resorted to, is not of any consequence. Merely because the Inquiry Committee did not write an elaborate report, does not mean that it did not consider all the relevant facts before it came to the conclusion that the examinee had used unfair means. Thus an unfair means Committee finding an examinee guilty of use of unfair means need not repeat the mode in which such means were resorted to.

(Para 20).

Case referred by the Division Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice M. R. Sharma to a Larger Bench on 26th March, 1976 for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice Prem Chand Jain, Hon'ble Mr. Justice S. C. Mittal and Hon'ble Mr. Justice A. S. Bains finally decided the case on 21st October, 1976.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Harbans Lal passed in Civil Writ Petition No. 5004 of 1975 on 5th December, 1975.

J. L. Gupta, Advocate with G. C. Gupta, Advocate and Vipan Kaushal, Advocate, *for the Petitioner.*

H. L. Sibal, Advocate with S. C. Sibal, Advocate and K. K. Aggarwal, Advocate; *for the Respondent.*

JUDGMENT

S. C. Mittal, J.—(1) Vinod Kumar appeared in the B. A. examination (Part III) held by the Kurukshetra University in April, 1975. The examination centre was S. A. Jain College, Ambala City of which Vinod Kumar was the student. Examination of English Paper A was held on 4th April, 1975. Vinod Kumar received notice (Annexure P. 1) on 23rd June, 1975, from the University accusing him of use of unfair means and misconduct by making deliberate previous arrangement to cheat in the examination by smuggling in another answer-book. As directed by the University, Vinod Kumar sent explanation on the following 25th. On 27th June, 1975, he appeared before the Unfair Means Committee (hereinafter referred to as the Committee). Vinod Kumar was given opportunity and heard by the Committee. Thereafter on 28th July, 1975, the Committee gave its decision (Annexure P. 11) finding Vinod Kumar guilty of resorting to unfair means and debarring him from passing the above-mentioned examination. The decision was notified by the University,—*vide* Annexure P. 10.

(2) Feeling aggrieved Vinod Kumar filed Civil Writ Petition No. 5004 of 1975. The learned Single Judge allowed it and quashed the aforesaid decision (Annexure P. 11) and the notification (Annexure P. 10). The University then filed the present Letters Patent appeal. It was heard by a Bench of this Court. The learned Judges expressed the view that the learned Single Judge whilst allowing

the writ petition did not conclude that the findings arrived at by the Committee were not supported by any evidence at all. Instead he himself adverted to the relevant evidence, including examination of answer-books and the writing of Vinod Kumar made on the dictation of the Committee. The learned Single Judge proceeded to examine the issue from the angle whether the conclusion arrived at by the Committee from the evidence before it, was warranted and justifiable and also opined that the Committee had not recorded specific findings on certain issues of fact. With these observations the learned Judges have made this reference to a larger Bench for clearly defining the scope of interference under Article 226 of the Constitution with the order of a domestic Tribunal like the Committee.

(3) The leading authority on the subject, mentioned in the order of reference, is *Board of High School and Intermediate Education, U.P. Allahabad and another* v. *Bagleshwar Prasad and another*, (1). In paragraph 12 of the report at page 878 their Lordships ruled :—

> "In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the Universities or appellant No. 1 (*Board of High School and Intermediate Education, U. P. Allahabad*) set up Enquiry Committees to deal with the problem posed by the adoption of unfair-means by candidates, and normally it is within the jurisdiction of such domestic Tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of the adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which educational institutions have to face from time to time is a serious problem and unless there is justification to do so, Courts should be slow to interfere with the decisions of domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities under Article 226, the High Court is not sitting in appeal over the decision in question; its

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

jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quash that order. But the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Enquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such enquiries, the Tribunals must scrupulously follow rules of natural justice; but it would, we think, not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary Courts of law. In the present case, no animus is suggested and no *mala fides* have been pleaded. The enquiry has been fair and the respondent has had an opportunity of making his defence. That being so, we think the High Court was not justified in interfering with the order passed against the respondent."

Earlier in *State of Mysore* v. *Shivabasappa*, (2), the Supreme Court observed as followed :—

"Domestic tribunals exercising quasi-judicial functions are not courts and, therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information, material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedures which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the

(2) A.I.R. 1963 S.C. 375.

enquiry was not conducted in accordance with the procedure followed in courts."

(4) These observations were quoted with approval in *K. L. Shinde* v. *State of Mysore,* (3). A Full Bench of this Court dealt with a case of an examinee, said to be guilty of mal-practice, in *Ramesh Kapur* v. *Punjab University and another,* (4). The learned Judges ruled that in the absence of any regulations having been framed by the University prescribing the procedure to be followed in such cases, it can certainly prescribe and follow its own procedure, so long as the rule of natural justice has been complied with. An examinee must be adequately informed of the case he has to meet and given a full opportunity in this regard.

(5) In a similar case a Bench of this Court in *The Punjab University, Chandigarh and others* v. *Prem Chand Handa,* (5) laid down that educational institutions like the Universities have to be left to themselves in the matter of enforcing discipline, and unless a patent case of violation of principles of natural justice or contravention of some statutory provision is made out, the Courts should be loath to interfere with the orders of educational authorities punishing students for their serious defaults.

(6) *Triambak Pati Tripathi* v. *The Board of High School and Intermediate Education, U.P.,* (6) was also a case of use of unfair means by an examinee. In the light of the observations made by their Lordships of the Supreme Court in *Bagleshwar Prasad's case* a Full Bench of the said Court held that it is open to the authority dealing with such a case to evolve its own procedure for acquainting the examinee with the charges and the material on the basis of which they are founded, and also for affording him an opportunity of screening those charges and putting forward his case. The authority has to observe the principles of natural justice in quasi-judicial manner. As to the power of interference of the High Court under Article 226 of the Constitu-

(3) 1976 (3) S.C.C. 76.
(4) A.I.R. 1965 Pb. 120.
(5) A.I.R. 1971 Pb. & Hary. 177.
(6) A.I.R. 1973 All. 1.

tion, the learned Judges expressed the view that in dealing with the validity of the orders passed by the authorities the High Court does not sit in appeal over the decisions of the authorities. If the order in question is not supported by any evidence at all, the High Court may quash it.

(7) Learned counsel for the parties cited at the Bar rulings relating to industrial disputes and cases of Government servants. I do not consider it necessary to deal with them because the authorities referred to above have clearly settled the law on the subject referred to this Bench.

(8) Adverting to the merits of the present case, regulation 11 of Ordinance 28 of the Calendar of the University provided that the Academic Council of the University shall appoint annually the Standing Committee to deal with cases of misconduct and use of unfair means in connection with the examinations, and if the Committee is unanimous, its decision shall be final except as given in the proviso, which, it may be clarified, has no application to the facts of the present case. It deserves mention at the outset that Vinod Kumar did not attribute *mala fides* to any of the four members of the Committee. Nor was it urged before us that the Committee violated any prescribed procedure. Thus the Committee, like any domestic tribunal, was free to evolve its own procedure, the only condition being that the principles of natural justice were applied.

(9) Having regard to the limited scope of interference under Article 226 of the Constitution with the decision of the Committee, the question for determination is whether the case in hand is of no evidence at all. For arriving at the correct conclusion the Court is required to examine the whole case as considered and decided by the Committee. Even in so doing, the Court has not to sit in appeal over the impugned decision (Annexure P. 11). A perusal thereof and of the proceedings shows that there were certain reports against Vinod Kumar alleging resort to unfair means in the examination by smuggling in supplementary answer-books (also described as continuation sheets) and attaching them to the original answer-book. Particular reference was to the answer-book of English Paper 'A'. A notice (Annexure P. 1) was sent to Vinod Kumar. He was required to submit his explanation and to appear before the Committee on 27th June, 1975. Vinod Kumar did appear before the Committee. He was questioned with regard to the material against him.

His explanation was given due consideration. Independently the Committee looked into the answer-book of Vinod Kumar. Finally the impugned decision was given.

(10) The material upon which the Committee acted was the main answer-book of Vinod Kumar, to which were attached supplementary answer-books (continuation sheets) by Vinod Kumar. The whole of the main answer-book was written with the same pen and ink. Its last page was left blank, which is not normally done. Then the supplementary answer-books were found to have been written with different pen and different ink. Not only that, upon a comparison of the main answer-book with the supplementary answer-books, the Committee formed an opinion that the latter were written in spare or leisure time.

(11) Annexure P. 8 is the statement of Vinod Kumar recorded by the Committee on 27th June, 1975. When questioned Vinod Kumar stated that the supplementary answer-books were in his handwriting. With regard to the use of different pen and ink, Vinod Kumar explained that he had two pens and one ink-pot. As the ink of the first pen finished, he started using the other pen. In view of the fact that this happened just when the main answer-book, but for the last page, had been written, it appears that the Committee did not accept his explanation. For its satisfaction the Committee further questioned Vinod Kumar. His reply that he could write 15 pages in an hour and that he took nearly 1½ hours to write the answer of questions 5 and 9 in the supplementary answer-books was recorded. The Committee is presumed to have taken into account the fact that the main answer-books comprised of 24 pages whereas the supplementary answer-books were of 8 pages each. Vinod Kumar solved three questions in the main answer-book approximately in one and a half hours. As is his own stand, he took the rest of 1½ hours in answering the other two questions in the supplementary answer-books. It appears that the Committee was not quite satisfied with this explanation of Vinod Kumar.

(12) Another test applied by the Committee was that Vinod Kumar was asked to write any portion of the answers given by him but he replied, "No. I had mugged all these answers which I do not remember now." When asked if he remembered any of the quotations used in his answers, Vinod Kumar replied in the negative. These

questions were obviously put to know whether Vinod Kumar was in reality the author of the answer-books.

(13) Before proceeding further it deserves particular mention that this Court has before it the record of proceedings conducted by the Committee and other relevant material. All the same, the big handicap in deciding this writ petition is that the Court has absolutely no means to know the demeanour of Vinod Kumar and the impression created by it on the minds of the members of the Committee. In the case in hand there is still an indication that in his zeal to defend himself, Vinod Kumar could not conceal his guilty conscience. In reply to notice Annexure P. 1, Vinod Kumar on 25th June, 1975, wrote Annexure P. 2 to the University denying the charge against him. On the 26th he made application Annexure P. 3 requesting the University for inspection of record. The file of the case was actually shown to him when he appeared before the Committee on 27th June, 1975. Vinod Kumar had taken along with him written application Annexure P. 9, which he placed before the Committee. In Annexure P. 9 Vinod Kumar had requested for an opportunity to lead evidence, including that of a handwriting expert, to prove that the supplementary answer-books (continuation sheets) were in his hand-writing. In Annexure P. 9 Vinod Kumar wrote :—

> "Today I was shown the relevant papers of the file and I have noticed that continuation sheet No. (1) is in my hand-writing."

Having regard to the fact that the file was actually shown to Vinod Kumar when he appeared before the Committee and also the fact that in notice Annexure P. 1 there was no mention of any continuation sheet, the Committee asked Vinod Kumar to explain what made him write the lines quoted above in Annexure P. 9. Vinod Kumar replied that on receipt of Annexure P. 1 he thought that he had used another ink also and because of the difference in ink suspicion might have arisen against him. He was again asked specifically but the reply given by him was wholly unsatisfactory.

(14) Another important circumstance is that the supplementary questions were put to Vinod Kumar in English but he chose to write their answers in Hindi. In his representation (Annexure P. 2) Vinod

Kumar stated that he got First Division in B.A. Part I but lost the First Division by two marks in B.A. Part II. **Learned counsel for** the University contended that this tall claim of Vinod Kumar, which was pressed before the learned Single Judge also, was not evidently acceptable to the Committee. The learned counsel also invited our attention to the following unrebutted averment made by the Registrar in his written statement :—

> "* * * * * * the petitioner failed in his Matriculation Examination once and passed the same as a private candidate at the age of nineteen in 1971 obtaining a mere 3rd Division. In Pre-University examination also be secured very poor marks and passed the same in Third Division. He might have done well in B. A. Part I and II which again is a case of suspicion that he might have resorted to unfair means even then. * * * * * !."

For the foregoing reasons it is evident that the impugned decision of the Committee was based on the cumulative effect of the circumstances discussed above.

(15) Learned counsel for Vinod Kumar vehemently urged that there was not an iota of evidence to show that he left the examination hall at any time during the course of the examination. It was also emphasised that the supplementary answer-books (continuation sheets) bore the seal and signatures of the Controller of Examinations, indicating that Vinod Kumar got them from the staff supervising the examination. The argument ignored the fact that it was a case not of direct but circumstantial evidence and the Committee considered the circumstances in the light of probabilities.

(16) The impugned decision was then assailed on the ground that in the main answer-book Vinod Kumar solved three questions and secured 7 marks out of 10 each. In the supplementary answer-books two questions were solved, the marks awarded to him were 5½ and 7 out of 10 respectively. If it were a case of use of unfair means, urged the learned counsel, Vinod Kumar should have secured higher marks in the two questions answered by him in the supplementary answer-books. The plausibility of the argument could be appreciated only if this Court were to sit in appeal over the decision of the Committee.

(17) Why the answers in the supplementary answer-books were written leisurely was sought to be explained by the common knowledge that every student begins to attempt the questions to which he is able to give best answers first. Having attempted the three questions in the main answer-book, Vinod Kumar had almost 1½ hours left to answer the remaining two questions in the supplementary answer-books. In the first place, this argument too could have received consideration if this Court were to act as a Court of appeal. In the second place, the four members of the Committee, who are academicians, were the best judges of the behaviour of the examinee in answering the questions. This contention, therefore, too is not tenable.

(18) As regards the inability of Vinod Kumar to reproduce or repeat part of the answers given by him or the quotations contained therein, his learned counsel contended that the Committee put the question in a very casual manner, in that Vinod Kumar was not specifically asked to repeat the answer to any particular question either in the main or the supplementary answer-books. This argument too does not appear tenable because the trend of the questions put to Vinod Kumar indicated that the members of the Committee had the supplementary answer-books in mind (*vide* Annexure P. 8). In any case it was open to Vinod Kumar to reproduce anything from the main answer-book but he did not choose to do so.

(19) With respect to the spelling mistakes of "scene" and "philosophy" committed by Vinod Kumar before the Committee, his learned counsel argued that in the main answer-book he had spelt them correctly. Be that as it may, the fact remains that Vinod Kumar did commit the mistakes and the Committee was fully justified in taking into account this circumstance.

(20) It was next contended by learned counsel for Vinod Kumar that in the impugned decision (Annexure P. 11) the Committee did not record a finding that he was guilty of smuggling in the supplementary answer-books, therefore, the punishment awarded to him was not warranted. The criticism is not acceptable, for, in the notice (Annexure P. 1) served on Vinod Kumar it was alleged that he had resorted to the use of unfair means and misconduct in the manner given below :—

> "Making deliberate previous arrangement to cheat in the examination by smuggling in another answer-book."

A perusal of Annexure P. 8 leaves no room for doubt that in the questions put to Vinod Kumar the Committee focussed his attention to the supplementary answer-books (continuation sheets). The fact that Vinod Kumar himself knew full well that the accusation against him was of smuggling in the supplementary answer-books is further evident from the contents of his application (Annexure P. 9) which he had written prior to his appearance before the Committee. In these circumstances the mere fact that in the impugned decision the Committee concluded that Vinod Kumar was guilty of resorting to use of unfair means, without repeating the above said mode thereof, cannot be of any consequence. Above all in *Bagleshwar Prasad's case* their Lordships of the Supreme Court referring to the various matters, observed in paragraph 11 at page 878 that the fact that the Inquiry Committee did not write an elaborate report, did not mean that it did not consider all the relevant facts before it came to the conclusion that the respondent had used unfair means.

(21) *Sukhbinder Singh* v. *The Punjab University* (7), was pressed into service on behalf of Vinod Kumar, but that was a case of the use of unfair means in which the learned Single Judge quashed the order of the Standing Committee of the University on the ground that the candidate was not given an opportunity to explain that he had copied his answer to a particular question from somewhere. The ruling is, therefore, distinguishable.

(22) The impugned decision (Annexure P. 11) of the Committee was next assailed on the ground that it could only be sustained if it was proved that Vinod Kumar used unfair means "during the examination hours". On the other hand, learned counsel for the University pointed out that this argument rested on Ordinance III (3) in Volume II of the University Calendar of 1976. In the 1976 Calendar the various kinds of unfair means were remodelled and consolidated. In the scheme the words "during the examination hours" were incorporated. Since the present case related to the examination held in April, 1975, therefore, the Calendar (Volume I) of 1970 of the University was applicable. Ordinance XXVIII therein dealt with

(7) 1969 P.L.R. 296.

the various kinds of unfair means, one of them defined by clause 5(a) read :

> "A candidate, found guilty of deliberate previous arrangement to cheat in the examination, such as smuggling in another answer-book or taking out or arranging to send out an answer-book, or impersonation, shall be disqualified for three years."

This argument is thus of no avail to Vinod Kumar.

(23) In the result this being not a case of no evidence at all, I would accept the appeal, set aside the judgment of the learned Single Judge and dismiss the writ petition. No order as to costs.

Prem Chand Jain, J.—I agree.

A. S. Bains, J.—I also agree.

N. K. S.

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