Harish Chandra Tewari and Others Vs The Board of High School and Intermediate Education, Uttar Pradesh, Allahabad

Court: Allahabad High Court

Date of Decision: Jan. 22, 1981

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: AIR 1981 All 144

Hon'ble Judges: M.N. Shukla, J; K.M. Dayal, J

Bench: Division Bench

Advocate: Gyan Chandra Dwivedi, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Partly Allowed

Judgement

M.N. Shukla, J.
Thirteen petitioners have joined together and filed this writ petition challenging the action taken by the respondent and

have prayed for a mandamus directing the respondent to announce the results of the petitioners. After the petition was presented the respondent

was directed to produce in this Court the answer books of the petitioners for our perusal. Accordingly the answer books were produced in Court

when the hearing commenced today. The learned Standing Counsel raised a preliminary objection that the cases of the petitioners were different

from each other, the adverse action taken against each of them furnished a distinct cause of action and hence a single petition on behalf of them

was not competent. It is not disputed that they were all aggrieved by a single order which was in the shape of a composite order with a schedule,

mentioning each one of them by name and indicating the action taken against them, namely, withholding of the result for the High School

examination, held in 1980. Where the action taken against several petitioners is identical and is embodied in a single order, all of them can

legitimately combine together and file a single writ petition. A hyper-technical view with regard to the joinder of parties for filing a writ petition in

such circumstances has not been judicially approved. Therefore, we overrule the preliminary objection.

2. The learned Standing Counsel requested us for time to file a counter affidavit. Since we have scrutinised the answer books of each of the

petitioners ourselves when they were produced in Court today, there appears to be no necessity of filing a counter affidavit in order to establish

any factual allegations. The only controversy which arises is as to whether there was evidence in the case to support the allegation of copying by all

the petitioners. Needless to say that it is not for this Court to enter into the question of sufficiency or otherwise of the evidence to support the

charge levelled against the petitioners. Nevertheless, the petitioners would be entitled to relief if the action complained of offends against certain

well-established canons. For instance, if there is denial of the principles of natural justice, or there is complete absence of evidence or any other

similar ground, this Court can always interfere in the exercise of its writ jurisdiction and quash the impugned order. See Ghazanfar Rashid Vs.

Secretary, Board of High School and Intermediate Education, U.P., Allahabad and Others, . It is this touchstone which has to be applied in

coming to the conclusion as to whether these writ petitions should be allowed or dismissed. Since no useful purpose will be served by postponing

the case to another date for hearing, we have considered it expedient to hear the parties finally today and dispose of the writ petition.

3. It is a somewhat delicate task to determine as to whether in a particular case it can be said that there is complete lack of evidence or that the

case involves any one of those features to which we have adverted above which alone would warrant interference by this Court. Except where

there are material allegations of a factual nature about the surrounding circumstances, the ultimate decision in most of such cases is bound to turn on

the intrinsic material contained in the answer books themselves. In the instant case, it is only from a meticulous perusal of the answer books

produced before us that an inference can legitimately be drawn as to whether copying has been resorted to or not. The learned Standing Counsel

laid great stress on the striking similarity which was evinced in the answers written by the various petitioners. He emphasised that it was remarkable

that no variation at all could be discerned in the answers written out in the various answer books. In our opinion, this is too facile argument on

which the conclusion whether there has been copying or not can be rightly founded. The question of novelty in the answers is in a great measure

dictated by the very nature of the subject matter. In certain cases the subject may be so trite and commonplace as not to permit any novelty or

variety of expression. In such circumstances the answers are bound to be more or less identical. On the other hand, the subject matter may be

inherently such as to afford multiple modes of expression and in such cases if variety is altogether absent and instead there is nothing not stale

similarity, then it may be inferred that in all probability there was copying. In the instant case the allegation of copying rested mainly on the

circumstances that the two translation pieces, one from Hindi to English and the other from English to Hindi were attempted by the various

petitioners and their answers so remarkably tallied with each other that they must be regarded as the result of copying. We are unable to accede to

this submission because the matter contained in the pieces given for translation was of such type that there was no room for differences, or variety

and the answers were expected to be cast in a common mould. Therefore, the apparent similarity of pattern found in the answers of the examinees

in the instant case cannot lead to the sure conclusion that they had resorted to unfair Weans.

4. There is, however, another test which may be regarded as more dependable in ascertaining whether there was copying and that test is the nature

of the common mistakes shared. Here again it must be immediately added that a single common mistake found in the answers and that too of a

casual nature would not justify a presumption of copying but if there are numerous mistakes which appear to be of an uncommon character,

amounting to absurdity and they are found identically occurring it the various answer books, surely there would justification for saying that they flow

from copying. In other words, if the magnitude of the mistakes committed is such that the answers written by the candidates sound like as

howlers"", to use a colloquial expression, it would make the conclusion irresistible that copying had been done. To assert that such bizarre mistakes

were spontaneous or that the resemblances were accidental is to travel beyond the realm of probabilities. When identical absurdities synchronise in

abundant profusion one cannot but hold that there was copying. It is this test which we have applied to the answer books produced before us.

Having carefully scrutinized them we were unable to discover anything in the answer books of the petitioner No. 1, namely, Harish Chandra

Tewari, Petitioner No. 4, Narendra Singh, Petitioner No. 5 Rakesh Kumar Pathak, Petitioner No. 6, Ram Chandra Pandey, petitioner No. 7, Om

Prakash Upadhya, petitioner No. 8, Radhey Shyam Pandey, petitioner No. 9, Jeet Narain Pandey, petitioner No. 10. Salik Ram Pandey,

petitioner No. 11, Jeet Bahadur Singh and petitioner No. 13, Prem Shankar Misra, which may suggest copying. So far as they were concerned we

found absolutely no evidence of the alleged copying and consequently the charge levelled against them could not be sustained. Those petitioners

are entitled to a direction commanding the respondent to declare their results for the High School examination held in the year 1981. Their writ

petition, therefore, must be allowed.

5. There are, however, three petitioners still left, namely, petitioner No. 2, Krishna Bali Pandey, petitioner No. 3, Lallan Singh and petitioner No.

12, Ram Ujagir Dubey, whose cases are different from those of the other petitioners whom we have already discussed. Thus, Ram Ujagir Dubey

(Roll No. 545333) is alleged to have copied from the answer book of another candidate bearing Roll No. 545337. In both answer books the

word ""here"" is misspelt as ""hear"". The original passage in English for translation into Hindi contained a dialogue between a fox and a goat. One of

the sentences ran as to what the fox was doing there. This was translated identically in a palpably wrong way by both candidates, who wrote ""what

are doing there"". The original passage further contained an invitation on behalf of the goat that the fox should also share the grass and taste it Both

candidates rendered it into English in a fantastic way like this; ""come you also take it taste"". Such freakish answers in one answer book after

another cannot be the result of mere accident. They are; surely very relevant and strong evidence of copying and, therefore, so far as these

petitioners are concerned, it cannot be said that there was no evidence at all on the basis of which the charge of copying could be levelled against

them, Similarly, we have also carefully examined the answer book of petitioner No. 2, Krishna Bali Pandey (Roll No. 545319) and petitioner No.

3, Lallan Singh (Roll No. 545321). and they also bristle with absurdities which are identical. We are, therefore, not prepared to accept that in the

cases of these three petitioners there was any ground on the basis of which the impugned action could be justifiably struck down. It is, of course,

beyond our province in writ jurisdiction to assess the sufficiency or otherwise of the evidence found in the case in order to sustain the charge.

Hence, these petitioners are not entitled to any relief from this Court under Article 226 of the Constitution.

6. In the result, this writ petition partly succeeds and is allowed on behalf of the ten petitioners, whom we have already enumerated. A mandamus

is issued to the respondent-Board directing it to declare the results of those petitioners for the High School Examination held in the year 1980. As

regards the other three petitioners, mentioned above, their writ petition is dismissed. No order is made as to costs.