(1990) 05 GAU CK 0009

Gauhati High Court

Case No: Civil Rule No. 319 of 1990

Md Hukum Shan Ali Boxi		APPELLANT
	Vs	
Gauhati University		RESPONDENT

Date of Decision: May 18, 1990

Acts Referred:

- Constitution of India, 1950 - Article 226, 226
- Gauhati University Act, 1947 - Section 23(1), 23(1)

Citation: (1991) 2 GLJ 175

Hon'ble Judges: S.N.Phukan, J and J.M.Srivastava, J

Bench: Division Bench

Advocate: J.Ahmed, K.H.Choudhary, D.N.Choudhary, D.N.Barua, A.S.Choudhary, A.K.Maueswari, Q.S.Kutubuddin, Advocates appearing for Parties

Judgement

S.N. Phukan, J.

This petition under Article 226 of the Constitution of India is directed against the order of the Gauhati University, respondent No. 1 communicated to the petitioner by the letter dated 3.2.90 vide Annexure 5 to the petition. By the said order the University Authority cancelled the examination of the petitioner for 3 years Degree Course Part I (Arts) examnation, 1989 for adopting unfair means and he was further debarred from appearing in any University Examination for the subsequent year.

2. The petitioner was student of Lalit Chandra Bharali College, Maligaon, Guwahati and respondent No. 2 was the Principal of the College at the relevant time. The petitioner appeared in the aforesaid examination and on 23.6.89 while he was appearing in the 1st paper of Political Science, the External appointed by the University to look into the conduct of the examination picked up a page of a book from the passage of the floor near the seat on which the petitioner was sitting in the examination hall. The petitioner was directed by the Principal to sign the said piece of paper and he had to do so as he had no other alternative. The word ''W i. e.

warning was written on the answer script and the petitioner was allowed to appear in all other papers of the examination. Thereafter, the petitioner received a letter dated 27.10.89 vide Annexure 2 to the petition from the University informing him that his result was withheld on the confidential report that printed loose sheet was found in his possession in Political Science, Paper I of the above examination. Petitioner was asked to show cause on or before 18.11.89. The petitioner denied the charge vide his show cause dated 17.11.89 annexed as Annexure 3 to the petition. On 1.12.89 a letter was sent to the petitioner asking him to appear before the Scrutiny Committee with all necessary evidences on 11.1.90 at 12 noon in the Office Chamber of the Joint Registrar of Examination. The said letter is annexed as Annexure 4 to the petition. Thereafter, the petitioner appeared and subsequently the impugned order was passed by the University Authority. In the petition, the petitioner has alleged that as he belonged to a particular minority community and as he was the General Secretary of the Students'' Union he had some confrontation with the respondent No. 2 and as such respondent No. 2 could not tolerate his position as General Secretary bearing ill along illfeeling towards him. Petitioner has alleged malafide against respondent No.2.

3. The respondent No. 2 has denied all the allegations and according to the said respondent she did not take the extreme step of expulsion as the case was detected by the External deputed by the University and that apart, as the petitioner was the General Secretary of the Union, apprehending trouble, she only reported the matter to the University without taking action under the relevant rule. We may state here that in paragraph 6 of the counter filed on behalf of the respondent No. 2, it has been stated that the petitioner had submitted a petition to the respondent No. 2 admitting his guilt and promising that he would not adopt such unfair means in future and he further submitted apology for doing so. This fact has not been stated in the writ petition. On behalf of the University, the respondent No. 1, an affidavit has been filed by the Joint Registrar of Examination and all the allegations of the petitioner have been denied. According to the University, the petitioner was given reasonable opportunity and the Scrutiny Committee constituted by the Executive Council of the University found that the petitioner had adopted unfair means in the examination hall. It has also been stated that the petitioner appeared before the Scrutiny Committee and he was examined by the Committee and although he denied the charges, the Scrutiny Committee found that the petitioner adopted unfair means in the examination. On the basis of the recommendation of the Scrutiny Committee, the Executive Council passed the impugned order (the resolution No.38/3/90 (5) and (14) dated 16.1.90) which is in accordance with law.

4. At the time of hearing, learned counsel appearing for the University has produced the record in original. We have heard the learned counsel for the parties.

5. The Gauhati University promulgated an Ordinance under section 23 (1) of the Gauhati University Act, 1947 for examination purpose known as Examination Rules.

For the purpose of the present petition we are concerned with Rules 52, 56, 60, 61 and 67 which are quoted below :

"Rule 52 Candidates must not carry into the Examination Hall or have in their possession while under examination any book, note paper,writing, scribing or other materials except their Admit Cards, University Registration Receipts and any other writing requisites or drawing instruments. Any article carried into the Examination Hall or found in the possession of a candidate in contravention of this rule shall be liable to be seized by the Officerincharge and the candidate shall be liable to expulsion.

Before entering the examination hall a candidate should leave behind all such prohibited articles at a place which may be set apart for the purpose by the Officerincharge but such articles may be left there only at the candidates own risk.

Rule 56 Notwithstanding the issue of the Admit Card, the Executive Council shall have the right, for any reason which may appear to them sufficient, to cancel the admission of any candidate to any Examination, whether before, during or after the examination.

The Executive Council may also debar a candidate from appearing at any subsequent University Examination or Examinations. The decision of the Executive Council in all such cases shall be final. Rule 60 A candidate under examination possessing any documents or paper(other than the Admit Cards or the Registration Receipts) is liable to expulsion, provided that the Officerincharge may not expel the candidate if he is of opinion that the paper or the document has no bearing on the examination in question.

Rule 61 Candidates consulting with one another, copying from others'' answerscripts, looking at others papers, trying to receive help from others or somehow suspected to be attempting unfair means will be warned by putting down a "W" on their answerscripts and the facts immediately reported to the Officerincharge who may expel a candidate if warned more than once.

Rule 67 In the event of any contingency not covered by these rules which calls for any immediate action, the Officerincharge will act on his own responsibility and report the action taken at once to the University for necessary action "

6. Before we proceed further, we would like to deal with the allegation of malafide against the respondent No.2. We have heard Mr. D. N. Baruah on this point and also perused the counteraffidavit filed. Except the general statement that there was an illfeeling towards the petitioner, no specific allegation has been given in support of malafide. We may incidentally mention that the respondent No.2 was the Officerincharge of the examination and instead of taking the extreme step of expelling the petitioner from the hall by invoking Rule 61 of the Rules she only reported the matter to the University Authority. The explanation given by the

respondent No. 2 regarding non expulsion is quite convincing. We are, therefore, of the opinion that the respondent No.2 dealt with the matter rather leniently and we do not find any malafide against the petitioner. In the affidavitinopposition filed on behalf of respondent No.2, the report of the respondent No. 2 to the Controller of Examination has been annexed as Aunexure 2. This is a very short report and this does not indicate anything that there was any illfeeling towards the petitioner. We, therefore, reject the allegation of malafide.

7. The power of this Court in dealing with such matter is well established. This Court does not sit as a Court of appeal. On behalf of University it has been urged that in dealing with orders passed by the University, the Court has to be slow in interfering with such orders. In this connection, we quote the observation of a Division Bench of this Court in which one of us (Phukan J) was a party. In Pranab '' umar Dey vs. The Dibrugarh University & others, 1988 (1) GLJ 183 in para 19, this Court observed as follows :

"University''s autonomy means its right of self government, and particularly, its right to carry on its legitimate activities of teaching and research without interference from any outside authority. However, consideration of natural justice, abuse of power, malafide, and other principles of administrative law take judges into areas that cannot be fenced off as academic and beyond proper jurisdiction of the Court."

Reliance has been placed also in the decision of the Apex court in Maharastra State Board of Secondary and Higher Secondary Education & another vs. Paritosh Bhupesh Kurmarsheth etc., AIR 1984 SC 1543. The Apex Court while dealing with a matter concerning examination of the view that Court should be extremely reluctant to substitute its own view in relation to academic matters.

8. In the case in hand we have to decide whether the impugned order was passed by the University within the Examination Rules and in doing so, whether the authority followed the principles of natural justice. In examining these two aspects we have to keep in mind the autonomy of the University as laid down in the above ratio by the Apex Court as well as this Court.

9. In this connection, learned counsel for the University has drawn our attention to a decision of the Privy Council in University of Ceylon vs. Fernando, 1960 (1) All ER 631 and also a decision of the Apex Court in Civil Appeal No 1408 of 1968 reported in ALR 1970 SC 1. The learned counsel for the petitioner has strenuously argued that in this case the principle of natural justice has not been followed, inasmuch as, the University Authority should have produced the witnesses first and thereafter allow the petitioner to crossexamine the said witnesses and also allow the petitioner to examine his witnesses. In this connection, learned counsel has drawn our attention to a decision of this Court in Naren Das vs. The Gauhati University & others reported in ALR (1973) 49. A Division Bench in the said judgment laid down the well settled principle regarding enquiry. We have perused the facts of that case and we find that

in case the University Authority was requested by the petitioner to supply some documents and allow him to inspect some other documents which was refused and on that ground the petition was allowed. But that is not so in the case in hand.

10. From the original record produced before us by the University Authority, we find that the petitioner in his own handwriting admitted copying and asked for pardon. This was not disclosed, as stated above, in the present petition. But the University only on the basis of that report did not pass the impugned order. The petitioner was asked to show cause which was done and thereafter by letter dated 1. 12. 89 vide Annexure 4, he was further asked to appear with necessary evidence before the Joint Registrar. Petitioner only denied the allegations, but did not produce any evidence. The original record produced before us contained the answerscripts and also the document which was found in the possession of the petitioner. The Scrutiny Committee came to the following finding :

"after proper examination of the relevant document including the incriminating documents, it is established that the candidate adopted unfair means in the examination hall. His answer on question No. 8 tallies exactly with that of the incriminating paper word by word. His examination be cancelled and he be debarred from appearing in any University Examination for the subsequent years."

11. This report was duly considered by the Executive Council and a resolution was passed accepting the recommendation of the Scrutiny Committee as stated above. To satisfy ourselves s, we have also perused both the incriminating document and the answerscript and decision of the Scrutiny Committee cannot be faulted. It may, however, be mentioned that we have done so as an exceptional case, though we are quite aware that we are not the appellate authority. Mr. Choudhury, learned counsel for the petitioner does not agree with the decision of the Scrutiny Committee and as such we had to take this course of action.

12. In view of the above factual position we have to decide whether in passing the order, University followed the principle of natural justice. Broadly speaking, this principle requires that a person whose civil right is affected must have reasonable notice of the case he has to meet; he must have a reasonable opportunity of being heard to meet the case against him i. e. opportunity to be heard must be given and such opportunity must be reasonable and the person must have the opportunity of adducing all relevant evidence on which he relies. What is reasonable will depend upon the facts and circumstances of each case.

In the present petition, the petitioner suppressed that he gave it in writing that he adopted unfair means in the examination and he also tendered apology. This writing of the petitioner has been produced by the University. The letter dated 27.10.89 (Annexure II) the petitioner was informed that printed loose sheet was found in his possession while he was appearing the Political Science, Paper I and he was asked to show cause which the petitioner did. Thereafter, by letter dated

1.12.89 (Annexure IV to the petition) petitioner was asked to appear before the Scrutiny Committee with all necessary evidences. Petitioner appeared, but he did not adduce any evidence. The Scrutiny Committee has given a reasoned finding. This facts in our opinion is sufficient compliance of the principle of natural justice and on that count the impugned order cannot be faulted.

13. The learned counsel for the petitioner relying on the Rule 61 of the Rules has urged that after giving warning, as the petitioner was not expelled from the examination hall, the subsequent order of the University is not in accordance with Rules. As Rule 56 starts with the nonobstante clause, we are of the opinion that Rule 56 gives wide power to the University to take action even though such an action was not taken by the Officerincharge. Although learned counsel is trying to make out a case that after giving warning further expulsion amounts to double punishment, we are unable to accept his contention, inasmuch as, this course of action was taken by the University Authority after proper enquiry and following the procedure of law. Rule 56 in our opinion squarely covers the case in hand. Reading Rule 56 alongwith the provisions of the Gauhati University Act to which our attention has been drawn, we are of the opinion that the University has got exclusive power to deal with such cases and pass appropriate orders.

Thus in our opinion the University was competent to pass the impugned order under Rule 56 of the Examination Rules. Although the learned counsel for the University has urged that in any event if the present case is not covered by the above Rule, under Rule 67 University can take action on receipt of report from the Officerincharge, in our opinion Rule 67 is not relevant for the present purpose.

14. At the time of the hearing learned counsel for the petitioner has produced before us a proforma regarding expulsion report which was required to be submitted by the Officerincharge to the University. According to the learned counsel as no such report was furnished to the University by the Officerin charge, the impugned order is bad in law. As the impugned order was passed under Rule 56, such a report is not necessary for the present purpose.

15. The learned counsel for the petitioner has further urged that the impugned order was passed in a summary manner and in support learned counsel has drawn our attention to a decision of the Calcutta High Court in Nitish Ranjan Das & another vs. University of Calcutta & others, AIR 1970 Calcutta 207.1n that case the learned Single Judge held that in such an enquiry the Enquiry Committee must proceed quasijudicially and submit report with its findings to the University Authority and that punishing examinee without such findings would offend principles of natural justice. In the case in hand, as stated earlier, principle of natural justice was duly followed before passing the impugned order and as such the contention has no force.

16. Our attention has been drawn to a decision of a Division Bench of this Court in Tribendralal Choudhury vs. Gauhati University & others, 1983 1 GLR 50 wherein it was held that it is necessary to follow the principle of natural nastice and for that purpose to institute an enquiry by an appropriate domestic body performing quasijudicial function, inasmuch as, civil right of the petitioner was involved. On this point there is no dispute. But, as stated earlier in the case in hand we are satisfied that the principle of natural justice has been followed. Another decision of this Court to which our attention has been drawn is Nripendu Goswami vs. Gauhati University, AIR 1967 Assam & Nagaland 5. In that case also a Division Bench of this Court held that absence of opportunity to the student to explain his conduct violates the principles of natural justice and further observed that the Authority must act judicially. Regarding principles of natural justice we have already given our finding.

17. Another submission of the learned counsel for the petitioner is that the impugned order is vague regarding debarring of petitioner in appearing in any University Examination. According to learned counsel it is not clear whether the petitioner is debarred for one year or more. In our opinion, the impugned order is clear in this regard and petitioner was debarred from appearing in any University Examination only for on? year. In otherwords, the petitioner shall be able to appear in any examination to be conducted by the University in the year 1991 and onwards.

18. Thus we hold that the impugned order was validly and legally passed and it called for no interference by this Court.

In the result, petition is dismissed, rule is discharged. No cost.