V. Amarnath Vs Board of Intermediate Education, Hyd.

Court: Andhra Pradesh High Court

Date of Decision: Oct. 18, 2001

Acts Referred: Andhra Pradesh Intermediate Education Act, 1971 â€" Section 17(1), 2

Citation: (2002) 3 ALD 191

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: D.V. Sitaram Murthy, for the Appellant; Government Pleader for Higher Education, for the Respondent

Final Decision: Allowed

Judgement

S.B. Sinha, C.J.
This writ appeal is directed against a judgment and order dated 9-7-2001 whereby and whereunder the writ petition filed

by the appellant herein for the following relief:

..to issue an appropriate writ or order or direction more particularly one in the nature of writ of mandamus declaring as illegal and arbitrary the

action of the respondent in cancelling the petitioner''s performance in all subjects in Senior Intermediate and debarring him from appearing for the

Senior Intermediate Examination till March, 2002 and issue a consequential direction to forthwith evaluate the petitioner''s Chemistry Paper II of

Senior Intermediate and declare the result.

was dismissed.

FACTS:

2. The appellant, who prosecuted first year Intermediate course during the academic year 1999-2000, secured 97% marks. He appeared for the

second year Intermediate examinations, which commenced from 29-3-2001. On 12-4-2001 when the appellant has tagged on the answer sheets

of Chemistry Paper II at 11.55 a.m., and was about to hand over them to Invigilator, he found two additional sheets written in ink on the floor

behind his seat and reported the same to the Invigilator. The Invigilator asked him to hand over those scripts. When the appellant was handing over

the additional scripts, the squad team entered the examination hall and booked a case of mal practice against the appellant.

3. The case of the appellant is that he was thoroughly checked while entering the examination hall and having regard to his brilliant career, it could

not be said that he had committed any mal practice. After obtaining the explanation from the appellant, the matter was referred to Malpractice

Committee. On scrutiny, the Committee suspected that the appellant used additional answer sheets for the purpose of copying.

4. By G.O. Ms. No. 539, Education; (V), dated 9-4-1975, the Governor in exercise of the powers conferred by Sub-section (1) of Section 17

read with Clause (1) of Section 2 of the Andhra Pradesh Intermediate Education Act, 1971, framed the rules relating to Committees of the Board.

Rule 5 deals with the Malpractices Scrutiny Committee and it reads:

i. It shall be appointed by the Board on the recommendation of the Chairman of the Standing Committee on Academic Affairs for scrutinising the

cases of malpractices resorted to, at the Intermediate Examination and offering its advice to the Secretary;

ii. It shall consist of not less than 4 members.

5. Pursuant to our order dated 24-9-2001 the answers scripts of the writ petitioner-appellant have been produced. The assertions made by the

appellant in the writ petition that he is a meritorious student appears to be correct. He has obtained the following marks :

English II 85 out of 100

Sanskrit II 97 out of 100

Maths IIA 75 out of 75

Maths IIB 69 out of 75

Physics 1157 out of 60

6. The learned Government Pleader appearing for Board states that if his results were published he would have topped the list of the successful

candidates in the entire State.

7. Unfortunately the appellant is a victim of circumstances. He behaved like a disciplined boy when he found some papers lying on the floor. He

brought the same to the notice of the Invigilator who in turn brought to the notice of the Superintendent.

8. The Superintendent although referred the matter to the malpractice committee, he took the correct stand before it stating:

I submit that myself, the D.O. and the Invigilator throughly checked and every candidate of the Centre-0347, the sitting squad members also

checked throughly all the students along with the candidate bearing Reg.No.8045303 at the Centre. He was not in possession of any forbidden

material.

At 11.55 a.m. after the warning bell was given, the candidate been the Reg. No. 8045303, tagged up his answer script, while standing up to

handover his answer script to the invigilator, he found two additional sheets written in ink squattering on the ground not belonging to the Centre-

0347. Thinking that they were left by some of her students by mistake he reported the matter to the invigilator.

The Invigilator instructed him to handover those additional sheets to him. So the student holding his answer script in one hand, picked up the

additional scripts from the ground while he was handing over all of them as per the instructions of the invigilator. Then the sitting squad member

entered the room, caught the said boy and booked the boy under malpractice case in spite of the protest of the student and the invigilator. After the

enquiry these facts are known to me, so I refuse to book the case, but the squad member happened to be a P.O. of APRJC, Chithapalli brought

pressure on me to book the case. So I have no option to book the case. Afterwards, I found that there is no fault in the part of the student, as

explained in his letter and the oral explanation of the invigilator. I am satisfied that the boy''s obedient and I am convinced that he is a very brilliant

student arid prospective rank holder.

I personally examined the certificate brought to me by his parents. Hence request you to not to penalise the student and see that his Chemistry

Paper-II may be valued as in normal course. With a view that a genuine bright innocent student should not be penalised, no mistake of his, I bring

these facts to your kind consideration, in order to undo the harm done to the student by the sitting squad and do justice.

9. Admittedly regulation 23 of G.O. Ms. No. 539 had not been complied with. The malpractice scrutiny committee had not served him a notice.

Compliance of the principles of natural justice is imperative in such a situation as can be seen from the instant case itself that career of a bright

student may also be adversely affected.

10. We have ourselves examined the Chemistry paper answer script of the appellant as also the offending materials. To a naked eye it is clear that

the same is written by two different persons. There is no presumption that the forbidden, material belongs to the candidate. Even the dates en

which the said two papers were written are different.

11. The principles of natural justice in a situation of this nature had to be complied with is no longer res Integra. In The Bihar School Examination

Board Vs. Subhas Chandra Sinha and Others, , it has been held:

This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least

a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the

examination as ineffective for the purpose it was held. Must the Board give an Opportunity to all the candidates to represent their cases? We think

not. It was not necessary for the Board to give an opportunity to the candidates the examinations as a whole were being cancelled. The Board had

not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a

mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examined each

individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go.

12. The said decision has been followed in Chairman, J and K State Board of Education Vs. Feyaz Ahmed Malik and Others, .

13. Only in a case where there has been a mass copying as was the case in Biswa Ranjan Sahoo and others Vs. Sushanta Kumar Dinda and

Others, , the principles of natural justice are not required to be complied with.

14. In Rajesh Kumar and Another Vs. Institute of Engineers (India), , it has been held:

The resume of the afore detailed facts gives a clear insight into the minds of the members of the Institute who sat in judgment on the fate of the

appellants. The doubts as expressed by the learned Single Judge of the High court: in the regular second appeal pertaining to the material available

and the sitting pattern and also that the appellants had never sat fa the subsequent examinations after the period of disqualification was over, were

conveniently disregarded by the Institute. It would, in these circumstances, be not wrong to assume that had the members of the Institute gone into

grips with that material, the result would have gone in favour of the appellants. Conveniently, other factors were brought in replacement to conquer

the field inasmuch as the appellants were put to a cramming test, there and then in order to judge their capability of memory retention. in a matter of

minutes. All literate men have been students at a given point of time but all have not been crammers. Those who cram do not achieve their goal by

a single reading. It is a ceaseless effort for days and days till the desired result is achieved. Crammers inter se do not have any nexus with each

other. The text of a book as the common source for cramming establishes no connection. That per se cannot be evidence of any conspiracy

between the crammers to adopt unfair mears in the examination unless there be material to show that there was copying of the answer-books,

descending from the answer-book of one of the candidates, or directly from the book leading to the copying by others. The overall consideration

of the Institute reflected that its members thought that they would be put to an embarrassment if the plea of the two appellants were to be accepted

and therefore, thought of declining relief to the appellants. Such result cannot be permitted to follow from the deliberation of the Institute. In the

interest of fair play this Court would thus step in to give a corrective dose.

15. The invigilator, the Superintendent and the Malpractice Scrutiny Committee have to act as locoparents. What is malpractice is stated by the

apex Court in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, , in the following terms:

We thus see that the Committee can only carry out its duties under Rule 1(1) by judging the materials, placed before it. It is true that there is no lis

in the present case, in the sense that there are not two contesting parties before the Committee and the matter rests between the Committee and

the examinee; at the same time considering that materials will have to be placed before the Committee to enable it to decide whether action should

be taken under Rule 1 (1), it seems to us only fair that the examinee against whom the Committee proceeding should also be heard. The effect of

the decision of the Committee may in an extreme case blast the career of a young student for life and in any case will put a serious stigma on the

examinee concerned which; may damage him in later life. The nature of misconduct which the Committee has to find under Rule 1 (1) some cases

is of a serious nature, for example, impersonation, commission fraud, and perjury; and the Committee''s decision in matters of such seriousness

may even lead in some cages to the prosecution of the examinee in Courts considering therefore the serious following the decision of the

Committee and the serious nature of the misconduct which may be found in some cases under Rule 1 (1), it seems to us that the Committee must

be held to act judicially circumstances as these. Though therefore there is nothing express one way or the other in the Act or the Regulations

casting a duty on the Committee to act judicially, the manner of the disposal, based as it must be on materials placed before it and the serious

effects of the decision of the Committee on the examinee concerned, must lead to the conclusion that a duty is cast on the Committee to act

judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees,

before it can take any action in the exercise or its power under Rule 1 (1). We are therefore of opinion that the Committee when it exercises its

powers under Rule 1 (I) is acting quasi-judicially and the principles of natural justice which require that the other party, (namely, the examinee in

this case) must be heard, will apply to the proceedings before the Committee. This view was taken by the Calcutta High Court in Dipa Pul v.

University of Calcutta, (I) and B.C. Das Gupta v. Bijoyranjan Rakshit, in similar circumstances and is in our opinion correct.

16. As regards the effect of spot report, this Court stated in K.V.S. PRASAD V. THE VICE CHANCELLOR, NAGARJUNA UNIVERSITY

1996 (2) ALD 604, that:

The question that has to be considered is whether any weight age was given to the statements submitted by the Chief Superintendent and also the

other Invigilators who did not find fault with the petitioner in any manner. It need not be emphasised and even in administrative actions having the

effect of civil consequence''s the principles of natural justice are required to be followed. Even though the hearing is not contemplated under the

procedure yet the consideration of the issue must be fair and the same should not suffer from arbitrariness. Fair play in action is an essential element

in administrative law. Consideration of extraneous material is as fatal as non- consideration of relevant material in administrative and quasi-judicial

proceedings.... In the instant case, no proper consideration was given to the case of the petitioner, more specially in the wake of the

statements/reports of the invigilators and Chief Superintendent.

17. Yet again in B. Sailesh Vs. Osmania University and Another, , it is stated:

The petitioner in his explanation in categorical terms stated that it was only some rough work and rough sketch written on the palm and on the

question paper.... There is nothing on record suggesting that the committee has even looked into the explanation submitted by the petitioner. Had

the committee looked into the explanation submitted by the petitioner, it would not have recorded stating that the petitioner had himself admitted in

his explanation of copying from something written on the palm and the question paper. The petitioner has never admitted such thing in his

explanation. It would have been totally a different matter, if the committee was not convinced with the explanation and it could have arrived at its

own conclusion by considering and properly evaluating the explanation submitted by the petitioner.'' Evidently the whole proceeding is vitiated for

the reason of non-application of mind.

18. In Kammalapati Brahmarao etc. Vs. Gulbarga University and others etc., , the order debarring the petitioners from taking the examination in

Engineering was questioned on the ground that principles of natural justice have been violated and the Karnataka High Court holding the impugned

orders to be violative of principles of natural justice observed:

The impugned orders do not'' reveal any discernible reasons and are not speaking orders. The effect of the impugned decisions blasts the careers

of the petitioners and will put a serious stigma on them and damage in their later life. The committee which is a quasi-judicial body and which had

to act judicially has not followed the principles of natural justice in a matter of such a serious nature and its action cannot be upheld merely on the

ground that the committee has to deal with a large number of such cases and that it will find it impossible to carry on its task if it has to strictly act

judicially as a quasi-judicial Tribunal.

19. A Full Bench of the Allahabad High Court in Ghazanfar Rashid Vs. Secretary, Board of High School and Intermediate Education, U.P.,

Allahabad and Others, held:

While it is open to the High Court interfere with the order of a quasi-judicial authority if it is not supported by any evidence or if the order is passed

in contravention of the statutory provisions of law, or in violation of the principles of natural justice, but the Court has no jurisdiction to interfere

with the order merely on the ground that the evidence available on the record is insufficient or inadequate or on the ground that a different view

could possibly be taken on the evidence available on the record.

20. The submission of the learned Government Pleader in the aforementioned context that no final order has yet been passed cannot be accepted.

The appellant''s result had been withheld. He has already suffered civil consequences. Although ordinarily in a given situation of this nature we

would have remitted back the matter to the malpractice scrutiny committee but keeping in view the facts and circumstances and the fair stand taken

by the learned Government Pleader we are of the opinion that the direction to the effect that the answer scripts of the appellant in Chemistry

paper-II be valued and his result of Intermediate be published within four weeks from the date of receipt of a copy of this order shall meet the ends

of justice. The writ appeal accordingly allowed. We make no order as to costs.