(1968) 08 CAL CK 0012

Calcutta High Court

Case No: Civil Revision Cases No''s. 320 and 405 (W) of 1964

Nitish Ranjan Das and Another		APPELLANT
	Vs	
University of Calcutta and Others		RESPONDENT

Date of Decision: Aug. 27, 1968

Citation: 73 CWN 54

Hon'ble Judges: A.K. Sinha, J

Bench: Single Bench

Advocate: Kashi Kanta Maitra, for the Appellant;Sailendra Nath Roy, N. Roy, N.R. Mukherjee, A.K. Banerjee and Mrs. Usha Dutt, for the Respondent

Final Decision: Allowed

Judgement

A.K. Sinha, J.

Both these Rules which were issued at the instance of the two students of Shantipur College for quashing orders cancelling their B.Sc. Examination of the year 1963 of the Calcutta University, are taken up together as they involve common question of fact and law. The facts set out by the petitioners in both the petitions are substantially as follows:

The petitioners were students of Shantipur College affiliated to the University of Calcutta. They appeared, at the B.Sc. Examination of the year 1963 held by the University of Calcutta on and from 3.4.63 at Shantipur College Centre, having had Mathematics, Physics and Chemistry as their combination subjects and their roll numbers were 41 and 40 respectively. The examination passed off smoothly and peacefully and there was no disturbance either in the examination hall or outside. The petitioners, it is alleged, fared very well in the said examination and were expecting with reasonable certainty to come out successful. The petitioners in spite of these facts found to their utter surprise from the University Gazette publishing the results of the B.Sc. Examination that their names appeared with the remarks ''reported against''.

2. Therefore, the petitioners made written representations to the respondents Nos. 1 to 3 and wanted to know as to why their results were withheld and also demanded publication of their results.

3. Then by letter dated 4.12.63 issued by the Assistant Controller of Examinations the petitioners were charged with breach of discipline at the said B.Sc. Examination as follows:

That in contravention of the rules of the examination you copied answers from the answer-scripts of your fellow examinees while appearing in the Mathematics Paper II.

The petitioners were also directed to appear before the Sub-Committee on 10.12.63 at 3 p.m. in the Darbhanga Hall and furnish explanation of their conduct with a caution that in case of default of appearance they will be deemed to have no explanation in the matter. The petitioners, however, appeared at the appointed date before the said Sub-Committee and denied categorically the charges levelled against them and also denied that there was any disturbance in the examination hall on the date of the examination of Mathematics Paper II in answer to the only question put to them by the Sub-Committee. It is alleged that neither answer papers were shown nor similarities or dissimilarities were examined. Facts were not disclosed, charge was not substantiated, no evidence was led in support of the said charge of breach of discipline in the examination hall. The petitioners were never told who were the fellow examinees from whose answer scripts of Mathematics Paper II they had copied and thereby committed breach of discipline. Then by a subsequent letter dated 21st December 1963, issued through the respondent No. 4, the petitioners were informed that the Vice-Chancellor and the Syndicate of the University of Calcutta had cancelled the B.Sc. Examination in respect of all 18 students of the Shantipur College whose results were ''reported against''. The petitioners, thus felt aggrieved and came up to this Court and obtained the above Rules.

4. Upon these facts quite a large number of grounds were taken but Mr. Moitra appearing on behalf of the petitioners in both these cases contended in the first place that the charges as framed against the petitioners were utterly vague, unaccompanied by statement of allegation and therefore, could not be sustained. In the second place, he contended that even though the Sub-Committee was appointed for the purpose of enquiry, the enquiry proceeding was held in violation of rules and principles of natural justice.

5. In support of the first contention Mr. Moitra drew my attention to the actual charge levelled against the petitioners (annexure A to the petition) and submitted that essential particulars were withheld from the charge. The particular rules which were alleged to be contravened were not given and the names of the fellow examinees from whose answer scripts the petitioners were alleged to have copied

were not disclosed or as to which of the answers in the examination papers were copied were also not given. So, according to him. in absence of these very essential and necessary particulars, it was impossible for the petitioners to submit proper explanation although it may be that they were directed to submit such explanation before the Sub-Committee. Since these very material particulars were not given, the petitioners must be deemed to have not been afforded reasonable opportunity to defend themselves against the imputation or allegation made in the charge. I do not think, there is much of substance in this argument. The petitioners were asked to be present before the Sub-Committee and if they were aggrieved by the uncertainties or vagueness of the charges it was open to them to ask for further or better particulars. There was nothing to show that even though petitioners appeared before the Sub-Committee they made any such representation demanding particulars. It is true that particular rule or the names of the students were not disclosed in the charge but these facts by themselves did not constitute violation of the principles of natural justice in the sense that the petitioners by such vagueness were denied of reasonable opportunity either to make representation against the charges or of any hearing in the matter. It is well known that under the CPC if necessary particulars are wanting in the plaint, the defendants are entitled to ask for better or for further particulars. Because certain particulars are wanting in the plaint barring those few exceptions provided in the Code of Civil Procedure, the plaint is not liable to be thrown out at sight. It is true that the rules and principles laid down in the CPC are not applicable to such enquiry proceeding, even then the principle is the same and in absence of specific rule as to framing of charge and the aggrieved parties are entitled to ask for better particulars before the Sub-Committee. Not having done so, I do not think, the petitioners are entitled to challenge the validity of the charge levelled against them only on the ground of vagueness or uncertainty. So, I cannot accept the first contention raised by Mr. Moitra.

6. Regarding the second contention the grievances of the petitioners are that no answer paper was shown and similarities or dissimilarities examined and no evidence was led in support of the charges against the petitioners. It is submitted that the only question that was put to the petitioners was whether there was any disturbance in the examination hall and this was categorically denied. In fact, everything was done on the pretext of holding an enquiry with a closed mind. Even if there was any conclusion that charge against the petitioners was established, it was according to Mr. Moitra reached by the Sub-Committee purely on a subjective process and not on any objective basis. So these enquiry proceedings were held in flagrant violation of rules and principles of natural justice. Reliance was placed by the learned Advocate on a case reported in (1) AIR 1983 P&H 480 (Ram Chandra Singh v. Punjab University), . I fail to see how this case is of any assistance to the petitioners. In this case the Registrar, Punjab University, on receipt of the report of the Superintendent that the petitioner kept notes concealed in a handkerchief submitted the case to the ''Unfair Means Committee'' constituted by the Syndicate

for examining such cases. The Committee without giving an opportunity to the petitioner disqualified him as contemplated under the Rules framed by the said University. In these circumstances, relying on the decision of the Supreme Court reported in (2) Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, it was held that the entire action taken against the petitioner was invalid as the petitioner could not be disqualified without being given an opportunity to show cause by the Unfair Means Committee against the proposed punishment. I therefore, do not think that this case has any application to the facts of the present case.

7. Mr. Moitra next relied on a decision of the Allahabad High Court reported in (3) Son Pal Gupta Vs. The University of Agra and Another, . The facts of this case are more or less similar to the facts of the above case of Punjab High Court. Here the examine was caught by the invigilator copying from a chit and then he took possession of the chit and asked the petitioner to give explanation which he declined to do. The invigilator then sent the report to the University which in its turn called for a report from the Examiner of the answer paper. His report was that the petitioner appeared to have copied certain answers from the chit. The papers were laid before the Vice-Chancellor who without giving the petitioner an opportunity passed order withholding the result of the petitioner and debarring him from appearing at the examination for a period of one year. It was held that though the order passed by the Vice-Chancellor was administrative in its nature, considering the fact that it had grave consequence inasmuch as it affected the future career of the student, natural justice demanded that the Vice-Chancellor should" have heard the petitioner before passing the order. So this case also has no application to the facts of the present case.

8. Mr. Moitra then argued that only question put by the Committee was whether there was any disturbance which was denied by the petitioner. As against this denial there was no other material or evidence relying on which the Sub-Committee could have come to any conclusion that the charge against the petitioner was established. If there is any similarity of the answers given by several examinees, that by no means could establish that the petitioners copied answers from the answer script of their fellow exminees. So according to Mr. Moitra even if there was any conclusion by the Sub-Committee that charge was established against the petitioner, although there is no indication in the report, it was based on no evidence and, therefore, the order passed on such conclusion cancelling the petitioner''s examination could not be sustained.

9. Mr. Mukherjee, learned Counsel for the respondents sought to repel this contention on an argument that there need not be any direct evidence to establish the charge against the petitioners. It was open to the Enquiry Committee to take into consideration relevant and proper materials and rely on circumstantial evidence to see whether the charge levelled against the petitioners was established or not. In

the instant case, the answers given by the petitioners were so similar to those of several other answer papers submited by other students that the conclusion would be irresistible that the petitioners must have copied their answers from the papers of other examinees. All that is necessary in such an enquiry is according to Mr. Mukherjee that it must be honest and fair and the students concerned must be given an opportunity to defend themselves in accordance with rules and principles of natural justice. Reliance was placed in support of this contention by the learned Advocate on a decision of the Supreme Court reported in (4) The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others, in which it was inter alia held that 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 It was held that the enquiries by domestic Tribunal in such cases must no doubt be fair and the students against whom the charges are framed must be given adequate opportunities to defend themselves and in holding such enquiries the Tribunal must scrupulously follow the rules of natural justice. But it would not be reasonable to import into these enquiries rules which govern all criminal trials held in the ordinary Courts of law. Mr. Moitra, however, sought to distinguish this decision on the ground that in the instant case, there was no circumstantial evidence either. The disputed answer papers were produced before "me but it is neither possible nor feasible for this Court to go into the adequacy or sufficiency of such evidence which led the Sub-Committee to come to one conclusion or the other. It seems to me that it is not possible to decide this point as it will be presently seen that there is no report with findings against the petitioners submitted by the Sub-Committee.

10. In the instant case it appears that the Sub-Committee merely made a recommendation for cancellation of the petitioners'' examination along with quite a large number of other students without any finding on facts and no reasons were even assigned for making such recommendation excepting a bare statement that the facts were considered. So unless there was a finding of the disputed question embodied in the report of the Sub-Committee, no punishment could be inflicted upon the students concerned on a mere recommendation of the Sub-Committee. It cannot be denied that the practice of adopting under means in the examination by the students is a serious problem facing the University authorities. While on the one hand, such charges if established show a mental degeneration of the boys to get through the examination by means fair or foul, on the other hand, these charges, if not properly reported against or established on findings with reasons of the concerned authorities impose a serious check on the future career of these boys. So, in order to cope effectively with such a dual situation, the Enquiry Committee must have a quasi-judical approach to the entire matter in controversy before it which demands that not only reasonable opportunity should be given to the students concerned to defend themselves but a report with its findings on facts must be submitted before the University authorities, so that they may pass appropriate

orders on conclusions based on such findings made by such Committee. Punishing a person without such findings is, clearly, opposed to fundamental concept of justice and runs counter to all principles of judicial procedure.

11. Mr. Mukherjee, however, submitted that the Sub-Committee did submit a report which would show that it fully considered the facts and then recommended punishment for those students whose roll numbers were mentioned under different groups in the report. It was also submitted that what was required in such a case was that the opportunity should be given to the students concerned and admittedly such opportunity was given and an enquiry was made in their presence. Thereafter, on conclusion of such enquiry, the Sub-Committee submitted a report with recommendation for punishment to the concerned students. So there was full compliance with the rules and principles of natural justice, it is not necessary that these findings or conclusion on facts must also appear in the report. I cannot agree.

12. The relevant rules relating to the duties of the Examination Board and the Syndicate were fully discussed and explained in a Special Bench decision of this Court reported in (5) University of Calcutta Vs. Dipa Pal, , also relied on by the learned Counsel for the respondents, from which it seems to me fairly clear that it is the Examination Board which must come to the conclusion that unfair practices have been established and report that such a student should be held not to have passed the examination. If it comes to such a conclusion, then it must report its reasons to the Syndicate which has no power to vary the findings of the Examination Board. The Syndicate may confirm such findings or if it disagrees with them, it may refer them back to the Board, for reconsideration. The Examination Board, in its turn may appoint a Sub-Committee whose duty it is to consider matters referred to them and to submit their decision and report to the Committee. In the Special Bench case, however, there was no compliance with these rules in the sense that the Sub-Committee reported not to the Examination Board but to the Syndicate and the Syndicate undoubtedly acted on that report considering the report as a report of the Sub-Committee. In giving his reasons for so holding the learned Chief Justice (Harries, C.J.) observed at page 736 of the Report inter alia as follows :

* * * but the difficulty arsies because the Sub-Committee admittedly never reported its findings to the Examination Committee and the latter body never considering the report of its Sub-Committee could have arrived at any findings whatsoever.

13. From the above observations it also follows that in absence of a proper report with its findings by the Sub-Committee of the Examination Board it is not possible for the Examination Board either to consider the report of its Sub-Committee or to arrive at any findings whatsoever. So applying the principles indicated above to the facts of the present case it seems to me fairly clear that the Sub-Committee failed to give a report from which a conclusion could have been reached by the Examination Board one way or the other. In fact, as already noticed there was no report by the Sub-Committee with its findings on fact but there was a mere recommendation for

cancellation of the examination of the different groups of students from different sections. From this report it is impossible to conclude that there was any evidence either direct or circumstantial to justify the conclusion that might be reached by the Examination Board in cancelling the examination of the students. So, in absence of proper report with the findings of the Sub-Committee the orders cancelling the examination of the petitioners cannot be sustained as valid.

14. Mr. Roy, the learned Counsel for the respondents in C.R. No. 405 (W) of 1964 submitted that in the instant case, whether or not the principles of natural justice were complied with, however, involved at best a disputed question of fact. Even assuming that it is so, it could not be denied that there was no report with the findings of the Sub-Committee and this rendered the impugned orders invalid.

15. Mr. Roy also drew my attention to an additional affidavit in opposition affirmed on 21.5.68 by one of the members of the Committee stating that the matter was enquired into in all details and after considering all the materials the Sub-Committee concluded that the charge against the petitioners was established and recommended for cancellation of their examination results. It is not for this Court to go into these questions of fact but for the Examination Committee which could only be done in accordance with the rules of the University. So if that rule dictates that there must be a finding with the report, that cannot be supplemented by stating certain facts before this Court on an affidavit.

16. So, for the reasons given, the order cancelling the examination results of the petitioners, in my view, suffers from serious infirmity and must be struck down as invalid. That being so, the only consequence is that this sub-committee which was constituted temporarily for an enquiry into the impugned charge not having been in existence the entire enquiry proceedings held against the petitioners by such a Committee also fail.

17. The result is, both the petitions succeed. The entire enquiry proceedings with the report dated 14th December, 1963 of the Sub-Committee (annexure ''C'' to the affidavit in opposition in C.R. No. 320 (W) of 1964) culminating in the impugned order of cancellation of the results of the examination of the petitioners are all quashed. I make it clear, however that all proceedings, report or recommendations of the Sub-Committee and orders made in respect of all other students mentioned in the said report remain unaffected. The order I make, will only apply to the petitioners. The Rules are made absolute to the extent indicated above. Nothing, however, in this judgment will prevent the University to reconsider the case of the petitioners in accordance with the relevant rules or regulations and in accordance with the law and then take such steps as it is entitled to take. I make no order as to costs.

Let a writ both in the nature of Certiorari and Mandamus issue accordingly.