HIGH COURT OF GUJARAT

MAHIDA MAHAVIRSINH VIJAYSINH
Versus
HEMCHANDRACHARYA NORTH GUJARATUNIVERSITY AND ORS

Date of Decision: 09 August 2012

Citation: 2012 LawSuit(Guj) 1165

Hon'ble Judges: K S Jhaveri

Eq. Citations: **2012 3 GLH 559**

Case Type: Special Civil Application

Case No: 16984 of 2011

Final Decision: Petition allowed

Advocates: Amit M Panchal, Dharmesh R Patel, R C Jani & Associate

Cases Referred in (+): **17**

K. S. Jhaveri, J.

[1] The petitioner herein has challenged the order dated 13.10.2011 passed by the respondent no. 1 cancelling the result of M.Sc. Part-II(March-June 2011) qua the petitioner and debarring the petitioner from appearing in any examination conducted by the authority till March-June 2012 summer/winter holding him guilty for unfair means (Mal Practice) in the examination.

1.1 At the outset it is required to be mentioned herein that the learned Single Judge on 17.01.2012 admitted this matter by issuing Rule and by way of interim relief stayed the order dated 13.10.2011 passed by the University and also directed the University to declare the result of the petitioner as if there was no irregularity found in petitioner's examination of the subject matter with a clarification that the declaration of the result would be subject to the final outcome of this petition. The said order was carried in appeal before a Division Bench of this Court by the respondent no. 1 by way of filing Letters Patent Appeal being LPA No. 73 of 2012 which was allowed and this petition was dismissed.

1.2 Being aggrieved by the same, the petitioner approached the Apex Court by way of filing Civil Appeal No. 3961 of 2012. The Apex Court by way of order dated 26.04.2012 dismissed the Letters Patent Appeal preferred by the respondent-University by setting aside the order dated 24.01.2012. This petition was restored but the order passed by the learned Single Judge directing the University to declare the result of the appellant as if there was no irregularity found in appellant's examination of the subject matter was set aside. In the aforesaid peculiar facts and circumstances of the case, the matter has been placed before this Court as per the order of the Honourable the Chief Justice .

[2] The facts of the present case in nutshell could be set out as under:

2.1 The petitioner, a candidate and examinee in M.Sc. Part-II examination conducted by Respondent no.1 University , on seeing his result shown his number in the column which stated that the 'result of the following candidate is held in reserve for the reason of malpractice and unfairmeans' addressed a communication on 26/7/2011 to the respondent University. Pursuant to the said communication, the university sent a communication as 'show cause notice' on 3/8/2011, calling upon the petitioner to explain and submit his reply, if any, within 7 days in respect of the unfair means and irregularities committed by him in his paper.

2.2 In answer to this, petitioner sent his reply on 8/8/2011 in which he completely denied the allegations contained in the show cause notice. The petitioner received communication on 3/9/2011 by UPC calling upon him to remain present on 17/9/2011 at 12.00'0' clock before the Special Examination Committee to answer the charge sheet issued to him. The petitioner thereafter received order dated 13/10/2011 informing him that the committee has found him guilty of malpractice in the aforesaid examination and he is debarred from appearing in any examination to be conducted by the university till March / June 2012.

2.3 Being aggrieved and dissatisfied with the above decision, the present petition is preferred..

[3] Mr. Patel, learned advocate appearing for the petitioner has contended that the petitioner never adopted any unfair means during the examination. He submitted that the petitioner was called for personal hearing on 17.09.2011 by the respondent University vide letter dated 03.09.2011. The petitioner remained present on that day but was not heard by the respondent no. 1 and that it was conveyed by the officers of the respondent no. 1 that the respondent no. 2 had informed them that his impression is not good for long and hence he will be punished and appropriate order shall be sent to him. It was also told to the petitioner to give in writing simple denial of the charges

which was accordingly done by the petitioner. Mr. Patel, therefore, submitted that as the petitioner was not heard before passing the impugned order, the order passed by the respondent no. 1 is bad in law and against the principle of natural justice.

3.1 Mr. Patel has further submitted that the respondent no. 1 has not considered the fact that there is no complaint or noting of any sort by the supervisor of the examination hall against the petitioner. He submitted that there is no material recovered from the petitioner and therefore no case is made out for unfair means by the petitioner.

3.2 Mr. Patel, in support of his submissions, has relied upon the following decisions of the Apex Court as well as this Court:

Union of India and Others vs. Harishankar Dixit Retd. Medical Superintendent, 2012 1 GLR 444.

State of UP vs. Shatrughan Lal and Another, 1998 6 SCC 651.

Siddharth Mohanlal Sharma vs. South Gujarat University, 1982 GLH 648.

Decision dated 17/18/19-10-2011 passed by this Court in Special Civil Application No. 5979 of 2011.

Decision dated 17.11.2011 passed by this Court in Special Civil Applications No. 14430 to 14436 of 2011.

[4] Mr. Amit Panchal, learned advocate appearing for the respondent University has vehemently opposed the present petition and submitted that the decision taken by the University is in the interest of students at large and in the interest of education and also with a view to maintain discipline. He submitted that after the examination, certain micro xerox photocopies containing answers written in the answer sheet were found by the evaluator Dr. C.P. Bhasin while assessing the answer book bearing number 336266 which fact was then brought to the knowledge of the respondent University. He submitted that the answer sheet was sent to the Controller of Examination of the respondent no. 1 who in turn sought information from the Director Dummy Dispatch Centre of the respondent no. 1 about the actual and original examination number of the candidate after which it was known that the answer sheet belonged to the petitioner.

4.1 Mr. Panchal submitted that the petitioner was called for hearing on 17.09.2011 vide letter dated 03.09.2011 before the Special Examination Committee pursuant to which the petitioner appeared and presented his case in person. The evaluator who had submitted his initial report was also called before the Committee and

statements were recorded. Mr. Panchal submitted that it cannot be said that the petitioner was not heard because on 17.09.2011, the petitioner was afforded an opportunity of submitting his case before the Committee and the petitioner made his submissions which were heard by the Committee to the satisfaction of the petitioner.

4.2 Mr. Panchal further submitted that the petitioner also signed the attendance sheet indicating that the petitioner was personally present before the Committee on 17.09.2011 and therefore now he cannot take a plea that he was not heard.

4.3 Mr. Panchal contended that the Committee in pursuance of the aforesaid facts and circumstances, after due deliberation in the matter and after evaluating the material produced before it, after providing due opportunity to the petitioner to present his case, after hearing the petitioner in person on 17.09.2011 and after showing the relevant material to the petitioner held that the petitioner was guilty of mal practice in the examination held in April 2011 and therefore imposed a punishment of debarring the petitioner from appearing in any examination conducted by the respondent no. 1 till March-June 2012.

4.4 Mr. Panchal, in support of his submissions, has relied upon the following decisions of the Apex Court as well as this Court:

Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology vs. Vaibhav Singh Chauhan, 2009 1 SCC 59.

Bhushan Uttam Khare vs. Dean, B.J Medical College, 1992 2 SCC 220.

National Board of Examinations vs. G. Anand Ramamurthy, 2006 5 SCC 515.

All India Council For Technical Education vs. Surinder Kumar Dhawan, 2009 11 SCC 726.

Controller of Examinations vs. G.S Sunder, 1993 Supp3 SCC 82.

Meerut Development Authority vs. Association of Management Studies, 2009 6 SCC 171.

The Keshav Mills Co. Ltd and Another vs. Union of India and Others, 1973 1 SCC 380.

A.K. Kraipak and Other vs. Union of India and Others, 1970 AIR(SC) 150.

Decision dated 04.11.2006 passed by this Court in Special Civil Application No. 11587 of 2000.

[5] Heard learned advocates for both the sides at length. The petitioner appeared in M.Sc. Part-II(Organic Chemistry) Examination on 01.04.2011 and after appearing in the said examination, the petitioner handed over the answer sheet to the supervisor present in the examination hall. The supervisor kept the answer sheets along with answer sheets of other students in a sealed cover which is opened at the time of evaluation of the answer sheet by the evaluator.

5.1 Thereafter, on 09.05.2011, during evaluation of the answer-sheet of the petitioner, the evaluator noticed micro-xerox copies of the study material of the concerned paper amidst the pages of the answer sheet of the petitioner. The evaluator, therefore, called two witnesses and then the answer sheet together with the micro xerox copies along with signatures of witnesses were sent to the Controller of Examination of the respondent no. 1 with an observation that in his opinion the matter must be referred to the Examination Reform Committee. The Controller of Examination vide letter dated 13.05.2011 asked the Director Dummy Dispatch Centre of the respondent no. 1 to know the actual and original examination number of the candidate.

5.2 The Director Dummy Dispatch Centre of the respondent no. 1 vide letter dated 24.05.2011 informed the Controller of Examination of the respondent no. 1 vide letter dated 24.05.2011 informing the Controller of Examination of respondent no. 1 that the number of the candidate concerned was 73 and the same was ascertained to be that of the petitioner's exam number and the same matched with the supervisor's signature on the date of the examination with the answer sheet of the petitioner.

5.3 Thereafter, the result of M.Sc. II (Organic Chemistry) was declared on 10.06.2011 wherein the result of the petitioner was not declared and the result showed 'Mal Practice' written in the place of marks. The respondent no. 1 also seems to have addressed a letter dated 03.08.2011 informing the petitioner that micro xerox copies had been recovered from his answer sheet by the evaluator and that he was given seven days time to clarify his case failing which it would be deemed that the petitioner had nothing to say in the matter. The petitioner replied to the said letter stating his case and requested therein not to take any action against the petitioner without affording an opportunity of hearing to the petitioner.

5.4 The Controller of Examination in order to grant an opportunity of being heard called upon the petitioner to remain present before the Committee of respondent no. 1 on 17.09.2011 in order to defend or represent his case. The petitioner remained present before the committee and the evaluator also seems to have remained present there.

5.5 The committee after hearing the petitioner and the examiner and after considering the material which was found along with the answer sheet of the petitioner and which was shown to the petitioner at the time of hearing after due deliberation and proper application of mind had taken the decision which has been impugned by the petitioner. The petitioner was heard by the Committee to his satisfaction which is evident from the statement made by him made which is enclosed in the original records of the case.

[6] This court is of the view that the letter addressed by the evaluator to the Controller of Examination along with two witnesses clearly makes out a case against the petitioner. The evaluator in his letter to the Controller of Examination has stated as under:

"I was assessing paper-I of M.Sc(II) Organic Chemistry. Answer book- OA-47, I was assessing and I found five xerox copies related to paper inside the answerbook and questions have been asked in the paper also. I am enclosing the answer book and 5-xerox slips. In my opinion the matter must be referred to the Pariksha Sudhi Samiti."

Considering the entire turn of events, this Court is of the view that this is a case of malpractice and no leniency should be shown in such cases.

6.1 It is a settled proposition of law that the High Court should not ordinarily interfere with the orders passed in educational matters by domestic tribunals set up by educational institutions unless there is clear violation of some statutory rule or legal principle.

6.2 No question of malafide by the evaluator is made out as there is no averment or allegation of that sort by the petitioner. It is not the case of the petitioner that the evaluator has got an axe to grind against him nor has he shown that there was any bias on the part of the Committee who heard the petitioner. In absence of any such allegation, it cannot be held that the impugned order was passed with malafide intention.

[7] At this juncture, it shall be pertinent to go through the decisions cited by learned advocates for both the parties which are considered one by one hereunder:

7.1 In the case of Union of India and Others , the Apex Court has held that non-supply of report/advice of C.V.C., U.P.S.C., in advance would vitiate disciplinary proceedings and in inquiry proceedings nothing can be said to be confidential and that any material which is to be relied against delinquent has to be supplied to him.

7.2 In the case of State of UP , the Apex Court has held that if the appellant State did not intend to give copies of documents to the respondent, it should have been indicated to the respondent in writing that he might inspect those documents. Merely saying that the respondent could have inspected the documents at any time is not enough. He has to be informed that the documents, of which copies were asked by him, may be inspected. Access to records must have been assured to him.

7.3 In the case of Siddharth Mohanlal Sharma this Court in para 48 has held as under:

"48. Yet another aspect which is relevant is the requirement of taking into consideration all the material aspects before deciding upon the quantum of penalty. The age, maturity, antecedents, family background, motivation, socio-economic factors, role played in the commission of malpractice or unfair practice, etc. are all factors which must enter into account in the quantification of penalty in disciplinary jurisdiction even in the academic field. Besides, though penalties are imposed with the end in view of creating a deterrent effect, the current thinking in penology even in the context of hardened criminals is that reformation and curative technology are also as much a part of penalty procedures as retribution. This thinking must be reflected with greater force in the disciplinary jurisdiction exercised by the academic bodies who deal with delinquents qua whom they are in loco parentis. The perpetrator of the malpractice or unfair practice at the examination, in most of the cases, is a youth at the threshold of life. To deprive him of education and an opportunity to secure academic qualification over an unreasonably long period might do more harm than good and his channelisation into good and useful life, which is the prime object of education and one of the principal purposes underlying the penalty, might be thereby frustrated."

[8] In all the above decisions, the point argued was that relevant documents relied upon were not supplied to the delinquent therein. In the present case, the contention of the petitioner is that he was not given opportunity of hearing. However, the documents on record show that show cause notice was issued to the petitioner which was replied to by him. Thereafter, personal hearing was given and it is only after that the order in question came to be passed. Therefore it cannot be said that the order was passed without affording an opportunity of hearing to the petitioner as contended by him.

[9] On the other hand, the decisions cited by learned advocate for the respondent may be considered hereinafter. In the case of Dr. Ambedkar Institute of Hotel Management , the Apex Court in paras 7, 8, 11, 12, 14, 18 and 27 has held as under:

"7. In this connection learned counsel for the respondent submitted that there was no evidence to show that the respondent had actually used the said slip of paper found in his possession. In our opinion, this is wholly irrelevant. All that is relevant is whether the slip of paper found in the possession of the examinee pertained to the examination paper in question. If it does, then it is a malpractice. In this particular case, the said slip of paper was brought into the examination hall and was found to be in the possession of the examinee while the examination was going on. Whether the respondent actually used that slip or not is irrelevant. This view finds support from the decision of this Court in C.B.S.E. vs. Vineeta Mahajan & another, 1994 1 SCC 6. Moreover, this is also borne out by sub rule (1) of the Examination Rules, quoted above.

8. In the present case there is no doubt that the slip of paper contained material pertaining to the examination in question. Hence, we cannot accept the submission of Shri Lalit Bhasin that the respondent was not guilty of malpractice since he was not found to have used that piece of paper.

11. Coming to the interim order of the learned Single Judge dated 31.3.2006, it may be noted that in the very second sentence of the order the learned Single Judge stated that the record did not bear out whether the chit had actually been used in the examination. As already noted above, this was a wholly irrelevant consideration. Once it is found that the chit/piece of paper contains material pertaining to the examination in question it amounts to malpractice, whether the same was used by the examinee or not.

12.. The learned Single Judge in the interim order has then emphasized on the fact that the respondent had apologized and had confessed to the possession of the chit. In our opinion this again is a misplaced sympathy. We are of the firm opinion that in academic matters there should be strict discipline and malpractices should be severely punished. If our country is to progress we must maintain high educational standards, and this is only possible if malpractices in examinations in educational institutions are curbed with an iron hand.

14. Here again, we respectfully cannot approve of the above observation of the learned Single Judge. A judge is supposed to keep his personal view in the background and not inject them in the judgments. What was done in his student days was surely irrelevant for deciding the case or even passing an interim order. It is true that seeing a slip of paper before commencement of the examination is not a malpractice, but in the present case we are concerned with its use during the examination and not before the examination. Hence we fail to see how the above observation of the learned Single Judge could be justified.

18. We are afraid we cannot agree with the view taken by the learned Single Judge. As already stated above, we have to be very strict in maintaining high academic standards and maintaining academic discipline and academic rigour if our country is to progress. Sympathy for students using unfair means is wholly out of place.

27. Before parting with this case, we would like to refer to the decisions of this Court which has repeatedly held that the High Court should not ordinarily interfere with the orders passed in educational matters by domestic tribunals set up by educational institutions vide Board of High School & Intermediate Education, U.P. Allahabad & another vs. Bagleshwar Prasad &; another, 1966 AIR(SC) 875(vide para 12), Dr. J.P. Kulshrestha & others vs. Chancellor, Allahabad University & others, 1980 AIR(SC) 2141(vide para 17), Rajendra Prasad Mathur vs. Karnataka University & another, 1986 AIR(SC) 1448(vide para 7). We wish to reiterate the view taken in the above decisions, and further state that the High Courts should not ordinarily interfere with the functioning and order of the educational authorities unless there is clear violation of some statutory rule or legal principle. Also, there must be strict purity in the examinations of educational institutions and no sympathy or leniency should be shown to candidates who resort to unfair means in the examinations."

9.1 Thereafter, in the case of Bhushan Uttam Khare , the Apex Court in para 8 has held as under:

"8. We have considered all the materials placed before us in the light of arguments advanced keeping in mind the well accepted principle that in deciding the matters relating to orders passed by authorities of educational institutions, the Court should normally be very slow to pass orders in its jurisdiction because matters falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice. We are satisfied that there had been sufficient material before the Executive Council to proceed in the manner in which it has done. It is not correct to say that the University had acted on non-existing rule for ordering revaluation. Ordinance 146 is comprehensive enough to include revaluation also for further action. The fact that two examiners were also the members of the Committee which recommended for revaluation cannot result in any bias even if they had been directly concerned with the original evaluation. It is true that in the second revaluation also there had been some changes between the original valuation and the revaluation results. However, it is not so glaring or demonstrably unconscionable as seen in the first revaluation. We cannot, therefore, accept the contention of the petitioner that the High Court had erred in not granting the relief sought for. We can only observe that the case of the petitioner, who alone has come

before this Court and who had secured higher marks in the first revaluation and is, therefore, aggrieved by the cancellation of the same, would by duly considered in the selection for Post-Graduate Course. The special leave petition is dismissed."

9.2 Again in the case of National Board of Examinations , this Court has held in para 7 & 9 as under:

"7. We have carefully considered the submissions made by both the learned Senior Counsel. In our opinion, the High Court was not justified in directing the petitioner to hold examinations against its policy in complete disregard to the mandate of this Court for not interfering in the academic matters particularly when the interference in the facts of the instant matter lead to perversity and promotion of illegality. The High Court was also not justified in exercising its power under Article 226 of the Constitution of India to merge a past practice with decision of the petitioner impugned before it to give relief to the respondents herein. Likewise the High Court was not correct in applying the doctrine of legitimate expectation even when the respondents herein cannot be said to be aggrieved by the decision of the petitioner herein. The High Court was also not justified in granting a relief not sought for by the respondents in the writ petition. The prayer of the respondents in the writ petition was to seek a direction to the petitioner herein to hold the examinations as per the schedule mentioned in the Bulletin of 2003. However, the High Court passed an order directing the petitioner herein to hold the examinations for the respondents according to the schedule mentioned in the Bulletin of 2003. The effect of this order is that the petitioner would have to permit the respondents to take the exam even if they do not meet the eligibility criteria fixed by the petitioner in its policy of 2003. Our attention was also drawn to the Bulletin of Information of 2003. In view of categorical and explicit disclosures made in the Bulletin, all candidates were made aware that instructions contained in the Information Bulletin including but not limited to examination schedule were liable to changes based on decisions taken by the Board of the petitioner from time to time. In the said Bulletin of Information, candidates are requested to refer to the latest bulletin or corrigendum that may be issued to incorporate these changes. Thus, it is seen that the petitioner has categorically reserved its rights in the Bulletin of Information to change instructions as aforesaid which would encompass and include all instructions relating to schedule of examinations. It is also mentioned in the Bulletin in no unascertain terms that the instructions contained in the Bulletin including the schedule of examinations were liable to changes based on the decisions taken by the Governing Body of the petitioner from time to time. Hitherto Examinations were being conducted twice a year i.e. in the months of June and December, 2006. There could be no embargo in the way of the petitioner bonafidely

changing the Examination Schedule, more so when it had admittedly and categorically reserved its rights to do so to the notice and information of the respondent nos.1 and 2. In any event, the completion of three years training is a necessary concomitant for appearing in the DNB final examination.

9. No malafide has been alleged against the petitioner in the writ petition. The Governing Body of the petitioner in the larger interest of the candidates as well as of the petitioner, and medical education in general, has decided to change the current practice of conducting the examinations on biannual basis for all the disciplines of modern medicine with the revised policy to conduct the biannual examination only in those streams where number of candidates is more than 100, from June 2006 onwards to curtail its expenditure. The above policy decision, in our opinion, cannot at all be faulted with."

9.3 In the case of All India Council for Technical , the Apex Court in paras 16, 17, 18 & 31 has held as under:

"16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realizing the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.

17. The role of statutory expert bodies on education and role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, courts will step in. In Dr. J.P.Kulshreshtha v. Chancellor, Allahabad University, 1980 3 SCC 418 this Court observed :

"11. Judges must not rush in where even educationists fear to tread...

17. While there is no absolute bar, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies."

18. In Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, 1984 4 SCC 27 this court reiterated :

"29. ... the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them."

9.4 In the case of Controller of Examinations , the Apex Court in para 10 has held as under:

"10. We have given our careful consideration to the above submissions. One thing must be put beyond doubt, in matters of enforcement of discipline this Court must be very slow in interference. After all, the authorities in charge of education whose duty it is to conduct examinations fairly and properly, know best how to deal with situations of this character. One cannot import fine principles of law and weigh the same in golden scales. In the present system of education, the system of examinations is the best suited to assess the progress of the student so long as they are fairly conducted. Interference by court in every case may lead to unhappy results making the system of examination a farce. For instance, we cannot but strongly condemn copying in the examination which has grown into canker of mass copying. Such unhealthy practices which are like poisonous weeds in the field of education must be rooted out in order that the innocent and the intelligent students are not affected. We feel that:

"The hour has come when we must clear

The educational fields from poison and from fear, We must remould our standards-build them higher, And clear the air as though by cleansing fire,

Weed out the damning traitors to education,

Restore her to her ancient place of awe.""

9.5 Thereafter in the case of Meerut Development Authority , the Apex Court has held in para 40 as under:

"40. There is no difficulty to hold that the authorities owe a duty to act fairly but it is equally well settled in judicial review, the court is not concerned with the merits or correctness of the decision, but with the manner in which the decision is taken or the order is made. The Court cannot substitute its own opinion for the opinion of the authority deciding the matter."

9.6 In the case of The Keshav Mills Co. Ltd. and Another vide paras 6, 7, 8, 14 to 18, 20 & 21 the Apex Court has observed the following:

"6. The whole dispute between the parties is in substance a question regarding the exact requirement of the rules of natural justice in the facts and situation of the case. There can be no question that whenever an order is-made under Sec. 18A against a company it has far-reaching consequences on the rights of that company, its shareholders, its employees and all persons who have contractual dealings and transactions with that company. It is also not seriously questioned that before passing an order of "take,over" under Sec. 18A it is incumbent on the Government to give at some stage a reasonable opportunity to the undertaking concerned for making suitable representations against the proposed take-over. In fact, under the rule-making power conferred by Sec. 30 of the Act the Government of India has already made a rule viz. Rule 5 which provides for such an opportunity. Rule 5 runs as follows :-

"5. Opportunity for hearing. The Investigator shall, before completion of his investigation, give the Management and the employees of the undertaking or undertakings in respect of which the investigation is ordered, reasonable opportunity of being heard including opportunity to adduce any evidence."

The only question that we have to decide now is whether after the undertaking has already been given such an opportunity at the time of investigation it is entitled to have a copy of the report and to make, if necessary, further representation about that report before a final decision is made by the Government about taking action under Sec. 18A of the Act. Our decision on this question will depend on our answers to the following questions :-

Is it necessary at all to observe the rules of natural justice before enforcing a decision under Sec. 18A of the Act ?

What are the rules of natural justice in such a case ?

(a) In the facts and circumstances of the present case have the rules to be observed once during the investigation under Sec. 15 and then again after the investigation is complete and action on the report of the Investigating Committee taken under Sec. 18A ?

(b) Was it necessary to furnish a copy of the Investigating Committee's Report before passing the order of take-over ?

7. The first of these questions does not present any difficulty. It is true that the order of the Government of India that has been challenged by the appellants was a purely executive order embodying on administration decision. Even so the question of natural _justice does arise in this case. It is too late now to contend that the

principles of natural justice need not apply to administrative orders or proceedings; in the language of Lord Denning M.R. in Regina v. Gaming Board ex-parte Benalm, "that heresy was scotched in Ridge v. Baldwin".

8. The second question, however, as to what are the principles of natural justice that should regulate an administrative act ,order is a much more difficult one to answer. We do not this it either feasible or even desirable to lay down any fixed rigorous yard-stick in this manner. The concept of natural justice cannot be put into a straight-jacket. It is futile, there fore, to look for definitions or standards of natural justice for various decisions and then try to apply them to the facts of a given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially an reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. See, for instance, the observations of Lord Parker in In re H. K. (a infant). It only means that such measure of natural justice should be applied as was described by Lord Reid in Ridge Baldwin case as "in susceptible of exact definition but what reasonable man would regard as a fair procedure in particular circumstances". However, even the application of the concept of fair play requires real flexibility. Every thing will depend the actual facts and circumstances of a case. As Tucker, L.J ,observed in Russell v. Duke of Norfolk:

"The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth."

14. There are at least five, features of the case which make it impossible for us to give any weight to the appellants' complaint that the rules of natural _justice have not been observed. First, on their own showing they were perfectly aware of the grounds on which Government had passed the order under Sec. 18A of the Act. Secondly, they are not in a position to deny (a) that the Company had sustained such heavy losses that its mill had to be closed down indefinitely, and (b) that there was not only loss of production of textiles but at least 1200 persons had been thrown out of employment. Thirdly, it is transparently clear from the affidavits that the Company was not in a position to raise the resources to recommence the working of the mill. Fourthly, the appellants were given a full hearing at the time of the investigation held by the Investigating Committee and were also given opportunities to adduce evidence. Finally, even after the Investigating Committee had submitted its report, the appellants were in constant communion with the Government and were in fact negotiating with Government for such help as might enable them to reopen the mill and to avoid a take-over of their undertaking by the

Government. Having regard to these features it is impossible for us to accept the contention that the appellants did not get any reasonable opportunity to make out a case against the take-over of their undertaking or that the Government has not treated the appellants fairly. There is not the slightest justification in this case for the complaint that there has been any denial of natural justice.

15. We must, however, deal with the specific point raised by the appellants that they should have been given further hearing by the Government before they took the final decision of taking over their undertaking under Sec. 18A of the Act and that, in any event, they should have been supplied with a copy of the report of the Investigating Committee.

16. In our opinion, since the appellants have received a fair treatment and also all reasonable opportunities to make out their own case before Government they cannot be allowed to make any grievance of the fact that they were not given a formal notice calling upon them to show cause why their undertaking should not be taken over or that they had not been furnished with a copy of the report. They had made all the representations that they could possibly have made against the-proposed takeover. By no stretch of imagination,, can it be said that the order for take-over took them by surprise. In fact Government gave them ample opportunity to reopen and run the mill on their own if they wanted to avoid the take-over. The blunt fact is that the appellants just did not have the necessary resources to do so. Insistence on formal hearing in such circumstances is nothing but insistence on empty formality.

17. The question still remains whether the appellants were entitled to get a copy of the report. It is the same question which arose in the celebrated case of Local Government Board v. Arlidge(1). That was a case in which a local authority made a closing order in respect of a dwelling house in their district on the ground that the house was unfit for human habitation. The owner of the dwelling house who had a right to appeal to the Local Government Board against the closing order made such an appeal. Sec. 39 of the Housing, Town Planning, & c., Act, 1909 provided that the procedure to be followed in such an appeal was to be such as the Local Government Board might determine by rules. The section, however, required the rules to provide that the Board was not to dismiss any appeal without having first made a public local enquiry. The Local Government Board had made such rules and in conformity with these rules held an enquiry in the appeal preferred against the closing order. The house-owner attended ;the enquiry with his solicitor and also adduced evidence. After considering the facts and the evidence given at the enquiry as well as the report of the inspector who inspected the house the Local Government Board refused to interfere with the decision, of the Borough Council

not to determine the closing order. The house-owner thereupon obtained an order nisi for a writ of certiorari for the purpose of quashing of the closing order. One of the principal grounds urged by the house-owner was that he was entitled to see the report of the appellant's inspector but the report had not been shown to him. A Divisional Court discharged the, order nisi but the Court of Appeal reversed the decision and ordered the writ of certiorari to issue. The matter then went up to the House of Lords who allowed the appeal and upheld the closing order. Viscount Haldane L.C., in his judgment held that though the decision of the Board must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice it does not follow that the procedure of every such tribunal must be the same. In the absence of a declaration to the contrary, the Board was intended by Parliament to follow the procedure which is its own and is necessary if the administration is to be capable of doing its work efficiently. AR that was necessary for the Board was to act in good faith and to listen fairly to both sides. . As to the contention that the report of the inspector should have been disclosed, his Lordship observed :-

" It might or might not have been useful to disclose this report, but I do not think that the Board was bound to do so, any more than it would have been bound to disclose all the minutes made on the papers in the office before a decision was come to".

18. Lord Moulton in his judgment observed that since the appeal provided by the legislature is an appeal to an administrative department of a State and not to a be judicial body it was enough if the Local Government Board preserved a judicial temper and performed its duties consciously with a proper feeling of responsibility. On the question whether it was necessary 'to disclose the report, his Lordship observed :-

"Like every administrative body, the Local Government Board must derive its knowledge from its agents, and I am unable to see any reason why the reports which they make to the department should be made public. It would, in my opinion, cripple the usefulness of these enquires..... I dissociate myself from the remarks which have been made in this case in favour of a department making reports of this kind public. Such a practice would, in my opinion, be decidedly mischevious."

20. The law relating to observation of the rules of natural justice has, however, made considerable strides since the case of Local Government Board v. Arlidge(2) . In particular, since the decision in Ridge v. Baldwin(3) a copious case-law on the subject of natural justice has produced what has been described by some

authorities as detailed law of "administrative due process'. in India also the decisions of this Court have extended the horizons of the rules of natural justice and their application. I See, for instance the judgement of this Court in Kraipak and Others v. Union of India(1). The problem has also received considerable attention from various tribunals and committees set up in England to investigate the working of administrative tribunals and, in particular, the working of such administrative procedures as the holding of an enquiry by or on behalf of a Minister. In fact, a parliamentary committee known as the Franks Committee was set up in 1955 to examine this question. This Committee specifically dealt with the question of what is described as "Inspectors' Reports". The Committee mentions that the evidence that the Committee received, other than the evidence from Government departments was overwhelmingly in favour of "some degree of publication" of such reports. After summarising various arguments given in favour of as well as against the publication of the reports, the Committee recommended that "the right course is to publish the inspectors' reports". The Committee also recommended that the parties concerned should have an opportunity if they so desired to propose corrections of facts stated in the reports. It may be mentioned, however that these recommendations of the Committee were not accepted by the British Government.

21. In our opinion it is not possible to lay down any general principle on the question as to whether the report of an investigating body or of an inspector appointed by an administrative authority should be made available to the persons concerned in any given case before the authority takes a decision upon that report. The answer to this question also must always depend on the facts and circumstances of the case. It is not at all unlikely that there may be certain cases where unless the report is given the party concerned cannot make any effective representation about the action that Government takes or proposes to take on the basis of that report. Whether the report should be furnished or not must therefore depend in every individual case on the merits of that case. We have no doubt that in the instant case non-disclosure of the report of the Investigating Committee has not can used any prejudice whatsoever to the appellants."

9.7 Thereafter, in the case of A.K. Kraipak and Others , the Apex Court in para 20 has observed the following:

"20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.-The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (Nemo debet esse judex

propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alter partem). Very soon there- after a third rule was envisaged and that is that quasi- judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasijudicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decison in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. The University of Kerala and Ors., the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a cornplaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that was necessary for a just decision on the facts of that case."

[10] Comprehending the aforesaid citations and law laid down by the Apex Court and this Court, the main rationale which emerges is that this court should not dilute educational standards as it shall not be in the best interest of students and the future generation at large. The procedure which has been followed by the respondent University is just and proper. There is no allegation regarding any prejudice or animosity in the minds of the evaluator or the examination committee against the petitioner so as to frame the petitioner into this entire tangle. Therefore, this court is not required to divulge into that area.

[11] In that view of the matter, the issue now remains to be seen is that whether the petitioner should be held guilty for the said malpractice. The evaluator while evaluation of the answer book of the petitioner has found micro xerox copies of the subject matter. The answer sheet was sent to the Controller of Examination of the respondent

no. 1 who in turn sought information from the Director Dummy Dispatch Centre of the respondent no. 1 about the actual and original examination number of the candidate.

11.1 The Director Dummy Dispatch Centre of the respondent no. 1 informed the Controller of Examination of respondent no. 1 that the number of the candidate concerned was 73 and the same was ascertained to be that of the petitioner's exam number and the same matched with the supervisor's signature on the date of the examination with the answer sheet of the petitioner. The micro xerox copies found in the answer sheet of the examinee pertained to the examination paper in question which is Organic Chemistry (M.Sc.-II) in the present case. It is a malpractice. In this particular case, the said xerox copies were brought into the examination hall which is how it can be said to have been retained in the answer sheet either by mistake on part of the petitioner or other reasons best known to him.

11.2 The Apex Court in the case of All India Council for Technical Education has held that the role of statutory expert bodies on education and role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, courts will step in.

[12] In the present case, this court reiterates that when no malafide is alleged against the evaluator or the examination committee, the presumption shall be in favour of the respondent no. 1 that the petitioner is guilty of the alleged offence when the xerox copies were recovered from his answer book. The respondent no. 1 seems to have followed due procedure under the law. In fact at the first impression, this court was of the opinion that the petitioner is required to be given benefit of doubt considering the fact that no malpractice was noted in the examination hall. But considering the original documents which were produced on record of the case by Mr. Panchal, learned advocate for the respondent University, more particularly the letter addressed by Dr. Bhasin, the evaluator, the communication between the Controller of Examination and the Director, Dummy Dispatch Centre coupled with the fact that no animosity or prejudiced is alleged against any member of the respondents, it has clearly emerged that the petitioner is guilty of malpractice during the examination.

12.1 The petitioner on 17.09.2011, when called upon by the respondent before the committee has given in writing on the very same day that he has been given an opportunity of presenting his case before the committee and that he has presented his case and that the same has been heard by the committee to his satisfaction. The petitioner has also appended his signatures on the said form. This is evident

from the original documents produced by Mr. Panchal before this Court. Therefore, now the petitioner cannot bring out a case for violence of principles of natural justice.

[13] It is contended by learned advocate for the petitioner that the petitioner was not heard by the respondent committee on 17.09.2011 and that he was told to give in writing a simple denial of his charges. However, as per the original records of the case, the petitioner vide communication dated 17.09.2011 has nowhere denied the charges against him and has instead stated that he has been heard to his satisfaction and that he has presented his case before the authorities.

13.1 The contention that no noting is made by the supervisor or that nothing has been recovered from the petitioner from the examination hall cannot be used as a bait to cover the charges against the petitioner. The circumstantial evidence as narrated hereinabove make out a case against the petitioner.

13.2 As far as the decision relied upon by learned advocate for the petitioner in the case of Union of India and others is concerned, it is required to be pointed out that the said decision relates to service jurisprudence and departmental proceedings and shall not be useful to the petitioner in facts and on the circumstances of the present case. In the opinion of this court, the petitioner himself ought to have used the said xerox copies. He was called upon by the committee to present his case before the committee in which the evaluator was also present. No malafide is alleged against the evaluator on that day also and therefore the balance of convenience is in the favour of the respondent.

13.3 However, considering the case of Siddharth Mohanlal Sharma cited by learned advocate for the petitioner wherein the Apex Court has observed that though penalties are imposed with a view of creating a deterrent effect, the current thinking in penology even in the context of hardened criminals is that reformation and curative technology are also as much a part of penalty procedures as retribution and that the perpetrator of the malpractice or unfair practice at the examination, in most of the cases, is a youth at the threshold of life and therefore to deprive him of education and an opportunity to secure academic qualification over an unreasonably long period might do more harm than good and his channelisation into good and useful life, which is the prime object of education and one of the principal purposes underlying the penalty, might be thereby frustrated, this court is of the view that the same may be useful to the petitioner in the present case.

13.4 Considering the same, the petitioner has to an extent made out a case as far as the quantum of penalty is concerned. Though the petitioner may have served his term of penalty, this court is of the opinion that the penalty of cancellation of the petitioner's result is just and proper. However, debarring the petitioner from appearing in any examination conducted by the authority till March-June 2012 summer/winter is on a higher side and the same requires to be quashed and set aside.

[14] For the foregoing reasons, petition is partly allowed. The petitioner is held guilty for unfair means (Mal Practice) in the examination. The order dated 13.10.2011 passed by the respondent no. 1 cancelling the result of M.Sc. Part-II(March-June 2011) qua the petitioner is upheld. However the order dated 13.10.2011 debarring the petitioner to appear in any examination conducted by the authority till March-June 2012 summer/winter is hereby quashed and set aside. Rule is made absolute to the aforesaid extent.