

HIGH COURT OF GUJARAT (D.B.)

MAHIDA MAHAVIRSINH VIJAYSINH

Versus

HEMCHANDRACHARYA NORTH GUJARAT UNIVERSITY AND ORS

Date of Decision: 28 December 2012

Citation: 2012 LawSuit(Guj) 1906

Hon'ble Judges: [Bhaskar Bhattacharya](#), [J B Pardiwala](#)

Case Type: Letters Patent Appeal; Special Civil Application

Case No: 1226 of 2012; 16984 of 2011

Subject: Constitution

Acts Referred:

[Constitution Of India Art 226](#)

Final Decision: Appeal dismissed

Advocates: [Dharmesh R Patel](#), [Amit M Panchal](#), [R C Jani](#)

Cases Referred in (+): 5

J.B.Pardiwala, J.

[1] This appeal under Clause 15 of the Letters Patent is at the instance of an unsuccessful applicant of a writ application under Article 226 of the Constitution of India and is directed against the order dated 9th August 2012, passed by the learned Single Judge, by which, his Lordship dismissed the writ application.

[2] The facts giving rise to this appeal may be summarized as under:

2.1 The appellant is a student of M.Sc. Part II and is studying in respondent No. 2 College. The appellant appeared in M.Sc. Part II (Organic Chemistry) examination on 1st April 2011 and after appearing in the said exam, had handed over the answer sheet to the supervisor, who was present in the examination hall. The supervisor had kept the answer sheet along with the answer sheets of the other students in a sealed cover which is ordinarily opened at the time of evaluation of the answer sheet by the evaluator.

2.2. On 9th May 2011, during evaluation of the answer sheet of the appellant, the evaluator noticed that there were micro xerox copies of the study material of the concerned paper inside the answer sheet of the appellant. The evaluator, therefore, called for two witnesses, and in their presence, forwarded the micro xerox copies of the study material and the answer sheet to the Controller of the Examination after obtaining the signatures of the two witnesses along with his opinion in writing that the matter deserved to be referred to the Examination Reform Committee.

2.3. The Controller of the examination, vide letter dated 13th May 2011, asked the Director of the Dummy Dispatch Centre of respondent No. 1 to ascertain the actual and original examination number of the candidate i.e. the appellant herein.

2.4. The Director of the Dummy Dispatch Centre of respondent No. 1, vide letter dated 24th May 2011, informed the Controller of the Examination that the number of the candidate concerned was 73 and the same was ascertained to be that of the appellant's examination number. The same matched with the supervisor's signature put on the date of the examination with the answer sheet of the appellant.

2.5. The result of the M.Sc. Part II (Organic Chemistry) was declared on 10th June 2011. The result of the appellant was not declared and the result showed "malpractice" written in the place of marks. The Respondent No. 1 addressed a letter dated 3rd August 2011 informing the appellant that micro xerox copies had been recovered from his answer sheet by the evaluator and that he had 7 days' time to clarify regarding the same, failing which, it would be presumed that the appellant had nothing to say in the matter. The appellant replied to the said letter stating his case and requested the authorities not to take any action against him without affording any opportunity of hearing.

2.6. The Controller of Examination, with a view to afford an opportunity of hearing to the appellant, informed the appellant in writing to remain present before the committee of respondent No. 1 on 17th September 2011 to enable him to answer the charge of malpractice. On that day the appellant had remained present before the committee and the evaluator had also remained present.

2.7. The committee, after hearing the appellant and the examiner and after considering the materials on record, decided to cancel the result of the appellant and also imposed a punishment to the effect that the appellant shall not be entitled to appear in any exam upto March 2012.

2.8. The said decision of the committee was challenged by the appellant before the learned Single Judge by filing Special Civil Application No. 16984 of 2011. The learned Single Judge, after taking into consideration all the relevant aspects of the

matter, took the view that the letter addressed by the evaluator to the Controller of the Examination along with the signatures of the two witnesses clearly made out a case of malpractice against the petitioner. The learned Single Judge also took the view that the Court ordinarily should not interfere with the order passed in educational matters by domestic tribunals set up by the educational institution unless the student is able to make out clear violation of some statutory rules or legal principle. The learned Single Judge also recorded the findings that the petitioner had not alleged any mala fide against the evaluator and the evaluator had also no axe to grind against the petitioner so as to falsely accused the petitioner to have indulged in corrupt practice. The learned Single Judge, however, thought fit to partly allow the petition. The order dated 13th October 2011 passed by respondent No. 1 canceling the result of the M.Sc. Part II (March June 2011) qua the petitioner was upheld. However, the order dated 13th October 2011 debarring the petitioner from appearing in any examination till March June 2012 was quashed and set aside.

[3] Feeling aggrieved and dissatisfied with the order passed by the learned Single Judge, the appellant has come up with this appeal. Mr. Dharmesh R. Patel, learned advocate appearing for the appellant vehemently submitted that the learned Single Judge committed serious error of law in upholding the decision of the authorities to cancel the result of the appellant on the charge of malpractice in exam. Mr. Patel submitted that the learned Single Judge ought to have taken into consideration an important question of law that the order passed by the examination committee was a non speaking order and no adequate opportunity of hearing was given to his client. Mr. Patel further submitted that the authorities also failed to supply the relevant documents to his client and as a result of which his client was not able to defend himself properly before the examination committee. Mr. Patel further submitted that the hearing which was given to his client on 17th September 2011 was nothing but just an empty formality and his client was already been conveyed by the officers of respondent No.1 that since the impression of his client was not good, the authorities were very firm to cancel the result. Mr. Patel, lastly, submitted that this Court may show some mercy on his client as he is a student and his entire career would be ruined, if the decision to cancel the result is upheld. Mr. Patel, therefore, very strenuously urged to allow this appeal and grant the relief as prayed for in the main petition.

[4] On the other hand, Mr. Amit Panchal, the learned counsel appearing for the respondent No. 1 University opposed the appeal and submitted that the learned Single Judge committed no error, not to speak of any error of law in confirming the order passed by respondent No.1 cancelling the result of the appellant. Mr. Panchal

submitted that the inquiry which was held was fair and afforded the appellant full opportunity to defend himself. He also submitted that the findings of the examination committee based upon probabilities and circumstantial evidence could not be said to be based on no evidence as the examiner had no reason to falsely accuse the appellant of having indulged in malpractice. The sum and substance of Mr. Panchal's argument is that there was no reason for the examiner to inform the examination committee falsely or with any mala fide intention that the micro xerox copies containing the answers were found amidst the answer sheet of the appellant. Mr. Panchal lastly submitted that in such type of matters no leniency or no mercy should be shown as in academic matters, there should be strict discipline and malpractice should be firmly punished. Mr. Panchal, therefore, prayed that there being no merit in the appeal the same may be dismissed.

[5] Having heard the learned counsel for the respective parties and having gone through the materials on record, the only question that falls for our consideration in this appeal is as to whether the learned Single Judge committed any error in upholding the decision of the examination committee to cancel the result of the appellant on the charge of malpractice.

[6] Before we advert to the rival submissions of both the sides, we would like to look into some of the provisions of Hemchandracharya North Gujarat University's Ordinances, Regulations and P.G. Rules. Mr. Panchal, during the course of hearing of this appeal drew our attention to some of the provisions, which relates to misconduct of any student and the procedure in that regard.

111: On receipt of a report regarding the misconduct of any student at any University or College examination, including branch of any of the rules laid down by the Executive Council for the proper conduct of examination or a student indulging himself in any activity which either intimidates or instigates other students for not appearing at any college or university examination or disturbing or attempting to disturb any College or University examination, the Executive Council shall have power to punish such misconduct in any one or more of the following ways:

- (i) Debarring such student from any University or College examination either permanently or for a specific period.
- (ii) Restraining him from taking admission or to or attending any course of studies in a college. Recognized institution or a University department,
- (iii) Retaining him from taking admission to any convocation for the purpose of conferring degrees,

- (iv) Canceling the result of such a student if he is a candidate at any University or College examination,
- (v) Canceling or withdrawing University Scholarship, if any, held by him.

The decision of the Executive Council as to what constitutes misconduct for the purpose of inflicting punishment under the provision of the ordinance shall be final.

126: In any case, where it is found that result of any examination has been affected by error, malpractice, fraud, improper conduct or other matters of whatsoever nature, it shall be competent for the Executive Council to cancel or amend such result in such manner as shall be in accordance with the true position and to make such declaration as the Executive Council may in its discretion consider necessary in that behalf, but subject to Ordinance 111 and 127. No result may be cancelled or amended after the expiration of six months from the date of publication of the result by the University. Notwithstanding anything contained above, the result of no candidate at any University examination shall be altered to his detriment of expiry of three months after the declaration of the result except when his/her case falls under Ordinance 111 and 127.

127: There shall be special committee for Examinations to deal with the matters pertaining to cases of direct/indirect unfair practices by the candidates before or during or after conduct of examinations, declaration of results, checking and reassessment etc.

Composition:

The composition of the special committee for examinations shall be as under:

- (1) Chairman, to be nominated by the ViceChancellor from the amongst the members of the Executive Council.
- (2) 5 Members, to be nominated by Executive Council.
- (3) Controller of Examination or Asst. / Dy. Registrar in charge of ExaminationMember

Secretary.

Powers:

Chairman of the committee shall be nominated by the Vice Chancellor from the members in (1) above.

(1) To examine each case of the unfair practice and after due process of natural justice, in terms of providing opportunity for the candidate concerned for written and/or oral submission decide the nature and extent of unfair practice. This decision will be arrived at by the simple majority of the members present.

(2) To recommend to the Executive Council for award of penalty in conformity with the provisions of Table 'A' in light of the nature of unfair practice as decided by it as in (1) above.

The Executive council shall consider the recommendation of the special committee in examinations and award the penalty as deemed fit.

(3) Misdemeanor on the part of teacher/staff members as related to the unfair practice will be reported by the Special Committee for examination to the executive council for necessary disciplinary action as deemed fit. All the cases of unfair practices shall be disposed off within 100 days of the reported occurrence of the event. No case shall be reviewed except in the event of any additional evidence submitted by the candidate within 15 days of the award of penalty, and the ViceChancellor finds a prima facie justification for such review by the Executive Council. No case shall be considered on the ground of mercy / sympathy.

[7] Mr. Panchal, the learned counsel for respondent No.1 made available for our perusal, the original file relating to inquiry. Having gone through the relevant documents, we noticed that the examination committee of five members was constituted to probe into the charges of malpractice or misconduct on the part of the appellant. The committee has assigned cogent reasons for reaching to the conclusion that the appellant had indulged into malpractice by carrying micro xerox copies of the answers in the examination hall and which were recovered by the evaluator at the time of evaluation of his answer sheet. We have also gone through the contents of the letter addressed by the evaluator to the Controller of the Examination no sooner he recovered the micro xerox copies from the answer paper of the appellant. In the said letter, it has been very specifically stated that there was paper 1 of M.Sc. Part II (Organic Chemistry) answer book OA 47 and he found five xerox copies of answers related to the paper inside the answer book and the questions had been asked in the paper also. The examiner enclosed the answer book and the five xerox slips and stated in his opinion, that the matter was one which deserved to be referred to the Pariksha Samiti.

[8] We also noticed that on 17th September 2011, the appellant and the examiner both had remained present before the examination committee. On 17th September 2011, the examinee acknowledged in writing as under:

"I was called on 17th Sept. 2011 before the examination committee. The student was also called on and he put his feelings behind the bunch of paper found during the control assessment. The bunch alongwith his answer book was submitted to the C.E.O. by me."

[9] We also found that the appellant had also acknowledged in writing before the examination committee that on 17th September 2011, the examination committee gave him an opportunity of hearing. That he had made his submission before the examination committee in his own way and which the committee may find it satisfactory.

[10] Thus, what is discernible from the record made available to us is that the appellant was given an opportunity of hearing by the Examination Committee. He himself has acknowledged that the committee had heard him and he had made his submissions in his own way. It is also very apparent that the appellant knew exactly as to what was the charge against him and therefore, it could not be said as argued by Mr.Patel that he was not given a reasonable opportunity of hearing. We are in agreement with the submission of Mr.Panchal that the examiner had no reason to falsely involve the appellant. No material has been placed before us nor any allegations have been levelled by the appellant that the examiner had some personal axe to grind against him, so as to falsely accuse him of indulging in malpractice.

[11] One thing must be put beyond doubt, as observed by Supreme Court in [Controller of Examinations V/s. G. S. Sunder and Another](#), 1992 2 GLH 140 that in matters of enforcement of discipline, the Court must be very slow in interference. After all, authorities in charge of education, whose duty it is to conduct the examination 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. Such unhealthy practice which are like poisonous weeds in the field of education must be rooted out in order that the innocent and intelligent students are not affected.

[12] Yet again, in [Director \(Studies\) V/s. Vaibhav Singh Chauhan](#), 2009 1 SCC 59 the Supreme Court while dealing with the issue of malpractice in exam made following observations, which we find very apt to quote considering the facts of the present case.

"18. 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.

21. The learned Single Judge has then directed the Institution to allow the respondent to reappear in the forthcoming 'Front Office Examination'. In our opinion, this again was wholly illegal. As noted in Rule 9.2 (quoted above), even if a candidate has used unfair means only in one paper, he will be deemed to have failed in all the papers. In the present case, the respondent no doubt was found with a slip of paper in the 'Front Office Examination' which was only one of the papers. However, in view of Rule 9.2 he will have to reappear in the entire examination I.e. in all the papers, and not merely in the Front Office Examination.

24. 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. 25. Moreover, the respondent/examinee has been given the minimum punishment under the rules and no lesser punishment could have been imposed, except in exceptional circumstances. It is true that when a person confesses his guilt it is often treated as a mitigating circumstance and calls for lesser punishment if that is permissible. However, this is not an absolute rule and will not apply in all kinds of cases. In particular, as stated above, in academic matters there should be no leniency at all if our country is to progress. Apart from that, the respondent had been given the minimum punishment under Rule 9.2 and we fail to understand how a lesser punishment could have given to him, except by exercising discretion in a particular case. This is not that kind of exceptional case, and no sympathy was called for."

[13] In [Board of High School and Intermediate Education U. P. V/s. Bagleshwar Prasad](#), 1963 3 SCR 767 it was observed that the identity of the wrong answers given by the respondent in that case with that of the other candidate bearing the consecutive Roll Number rendered the charge of the respondent having employed unfair means highly probable and that the findings of the Inquiry Committee based upon such probabilities and circumstantial evidence could not be said to be based on no evidence as in such matters direct evidence is seldom available. It was further pointed out that in dealing with such cases the enquiry held was fair and afforded the candidate an opportunity to defend himself, and the matter should not be examined with the same strictness as applicable to criminal charges in the ordinary Courts of law.

[14] On the point of principles of natural justice, the Supreme Court in [Haryana Finance Corporation V/s. Kailashchandra Ahuja](#), 2009 Supp AIR(SC) 909 made the following observations.

25. It is settled law that principles of natural justice have to be complied with. One of the principles of natural justice is audi alteram partem ("Hear the other side"). But it is equally well settled that the concept 'natural justice' is not a fixed one. It has meant many things to many writers, lawyers, jurists and systems of law. It has many colours, shades, shapes and forms. Rules of natural justice are not embodied rules and they cannot be imprisoned within the straitjacket of a rigid formula.

[15] In the leading case of [A.K.Kraipak V/s. Union of India](#), 1969 2 SCC 262,

"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 complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case".

[16] In our considered opinion, on the materials available, the ultimate conclusion reached by the learned Single Judge cannot be termed as unreasonable or one warranting any interference at our end in this appeal. We find that there is no merit in this appeal and the same deserves to be dismissed. We, accordingly, dismiss the appeal. However, in the circumstances of the case, there shall be no order as to costs.