

Before Permod Kohli, J.

ANKIT GARG—Petitioner

versus

PUNJABI UNIVERSITY, PATIALA AND OTHERS—Respondents

C.W.P. No. 20546 of 2008

12th November, 2009

Constitution of India, 1950—Art. 226—Ordinances relating to Prevention, Punishment and Procedure concerning cases of Misconduct and Use of Unfair Means in or in relation to Examination—B. Tech. student of 5th semester found in possession of a slip—Debarred from appearing in any University for 3 years and declared fail in examination—Student appeared before UMC—UMC recording statements of witnesses in absence of petitioner—No opportunity provided to cross-examine witnesses—Ordinances do not provide a procedure requiring recording of statements of witnesses in presence of student nor right to cross-examine them—Non-observance of principles of natural justice is fatal—Absence of fair and impartial enquiry laid down rules of natural justice would apply—If evidence is recorded in presence of delinquent student and he is provided adequate opportunity to question witnesses that would be just and proper—Petition allowed, impugned orders debaring petitioner from appearance in future examinations set aside.

Held, that from the reply filed, the impugned order or even the record produced before this Court, no specific averments regarding alleged misconduct have been made. What was the misconduct and its extent is difficult to say, in the absence of the set of allegations against the petitioner. The disqualification which varies from two years to five years is dependent upon the nature of his misconduct and unless the allegations are made known to the candidate or at least on record, it is anybody's guess and thus, the circumstances which necessitated imposition of disqualification for three years are not ascertainable. This aspect is sufficient for exercising power of judicial review to scrutinize the validity and adequacy of the punishment imposed. I am conscious of the fact that use of unfair means in an examination

is a very serious matter and any candidate indulging in unfair means deserves no leniency or indulgence by the Court. At the same time, the Court cannot ignore the fact that the authorities must adopt a transparent and fair procedure which should be evident at least from the record, if not from the impugned order. The action has to be absolutely transparent particularly, when there are some allegations of *mala fide*. Even in absence of allegations of *malafide*, the action has to be transparent and fair which is absent in the present case.

(*Para 13*)

Surinder Garg, Advocate, *for the petitioner.*

Vipul Jindal, Advocate, *for respondents No. 1 to 4.*

PERMOD KOHLI, J. (ORAL)

(1) The order dated 27th May 2008 (Annexure P-7) is under challenge in the present petition whereby the petitioner has been debarred from appearing in any University examination for three years under UMC Ordinances 15 and 25. He was also declared failed in the examination in question. The factual averments made in the writ petition are noticed as under :—

(2) The petitioner was a student of 5th Semester of Yadwindra College of Engineering Talwandi, District Bathinda. He appeared in the 5th Semester Examination of B. Tech. in the subject of Micro-Processor on 4th December, 2007. The Deputy Superintendent, Gurpreet Singh reported that the petitioner was in possession of a slip at the time of examination and when he was asked to hand over the slip, he swallowed the same and also misbehaved with him. Gurpreet Singh made the following report :—

“A slip was caught from the concerned candidate having Roll No. 5378 on 4th December, 2007 at about 3.15 P.M. Thereafter, the said candidate misbehaved with the concerned Staff. He refused to sign on this form and also refused to attempt the paper on another answer-sheet. During this, the abovesaid candidate destroyed the proof (destroyed the caught slip). He refused to give any statement.

Sd/-Gurpreet Singh”

(3) On the basis of the aforesaid report, the Centre Superintendent

Shri Kaur Singh Dhillon made a report on the file. He also stated that when the talk was going on, he had to move another room in emergency and when he came back, the student had already left the hall. A case of unfair means was prepared against the petitioner and sent to the University. The petitioner was served with a Memo Dated 4th February, 2008 to appear in the office of Assistant Registrar (UMC) on 15th February, 2008 at 12.00 P.M. However, the date for appearance of the petitioner was postponed to 29th of February, 2008 at 10.00 a.m. and the petitioner was communicated in this regard, *vide* Memo dated 10th February, 2008. The petitioner filed written reply dated 13th February, 2008 to the Memo denying the allegations and pleaded that he has been falsely implicated on the asking of one Dwarka Dass, who was working as a Workshop Incharge in the College. He also pleaded that he is a good student and had secured 65% marks in the previous semesters and never misbehaved with any person. The petitioner, however, appeared before the Unfair Means Committee on 29th February, 2008. It is alleged that when he appeared before the UMC, he was assured that he will be called again when the statements of the witnesses of the University will be examined. It is stated that statements of Centre Superintendent Kaur Singh, Dwarka Dass and Gurpreet Singh were recorded by the UMC on 27th March, 2008. But the Petitioner was never called by the Committee. The statements were recorded in his absence and he was not provided any opportunity to cross-examine. The petitioner has also alleged that some line was added in the statement of Gurpreet Singh. The petitioner was thereafter served with the impugned order dated 27th May, 2008 (Annexure P-7) referred to here-in-above. The petitioner preferred an appeal on 20th June, 2008 (Annexure P-8) under Ordinance 44 before respondent No. 2 i.e. the Vice-Chancellor of the University. When the said appeal remained pending for quite some time, the petitioner filed CWP No. 19824 of 2008 before this Court. The said writ petition was, however, disposed of, *vide* order dated 26th November, 2008 by a Division Bench of this Court on the statement of the counsel for the University that the appeal shall be decided before the examination for the next Semester. It is stated by the petitioner that he approached the office of respondent No. 2 and he was handed over a letter/order dated 1st December, 2008 (Annexure P-11) which indicates that meeting of the Unfair Means Committee was held on 22nd September, 2008 and the punishment awarded to the petitioner was upheld by the Vice-Chancellor. It is stated that this order

has been passed on the representation of petitioner's father made on 2nd July, 2008, but no decision has been taken on the appeal preferred by the petitioner.

(4) The petitioner has totally denied the incident of alleged use of unfair means in the examination hall. With a view to support his contention, he has placed on record copy of representation from some students and affidavits of three students, namely, Parshant Kumar, Himanshu and Sahil Sharma. These affidavits are stereo-typed. It is stated in the affidavits that the petitioner is innocent and is harassed by one of the teachers Dwarka Dass. It is also mentioned that Dwarka Dass, after searching the petitioner throughout the examination hall, took him to the vacant room other than the examination hall. Nothing was disclosed openly and it was only said that it was a UMC case. It is further stated in the affidavits that when the petitioner came back to the examination hall, he was pleading and crying that he is innocent. It is further mentioned in the affidavits that Gurpreet Joshan was nowhere involved in the conspiracy. The petitioner claims that he made another representation dated 23rd October, 2008 to respondent No. 2 for supplying the copy of the decision and he be given permission to appear in the examination of 7th Semester by issuing roll number. It is, however, stated that he was never informed that he has already been imposed punishment on 22nd September, 2008. Initially, Dwarka Dass and Gurpreet Singh, Deputy Superintendent were not parties to the writ petition. However, *vide* order dated 20th March, 2009 passed in CM No. 5078 of 2009, they were impleaded as party respondents No. 6 and 7 to the writ petition.

(5) Separate replies have been filed by respondents No. 1 to 4 and 6 and 7. Respondents No. 1 to 4 filed their reply through one S.S. Khera, Registrar, Punjabi University. It is reiterated that a slip was detected by the Deputy Superintendent, Gurpreet Singh Roshan from the petitioner. While denying the allegation of the petitioner about Dwarka Dass, it is stated that the controversy between Dwarka Dass and the petitioner has nothing to do with the UMC case against the petitioner. When the reply was filed by respondents No. 1 to 4, Dwarka Dass was not a party and thus it was pleaded that allegations against Dwarka Dass could be replied only by him. The respondents also pleaded that no assurance was extended to the petitioner that he will be called to cross-examine the witnesses as alleged

in the writ petition. It is also pleaded that it was not a departmental enquiry where the petitioner may be provided an opportunity to cross-examine the witnesses. It is thus admitted that statements of witnesses were recorded in absence of the petitioner and that he was not provided any opportunity to cross-examine. It is further stated that UMC has rightly found the petitioner guilty of using unfair means and the Vice-Chancellor has also agreed with the findings of the UMC.

(6) The University has framed Ordinances regarding Prevention, Punishment and Procedure concerning cases of misconduct and use of Unfair Means in or relating to Examinations prevalent at the Punjabi University, Patiala. These Ordinances were made effective with effect from 1st April, 1991. The relevant extract from the Ordinances is reproduced here under :—

- “1. These ordinances may be called “Ordinances relating to Prevention, Punishment and Procedure concerning cases of Misconduct and Use of Unfair Means in or in relation to Examination” and be abbreviated as Ordinances relating to Unfair Means cases”.
- 2.1 In these Ordinances unless there is anything repugnant to the subject or context :
 - (i) “Disqualification shall mean depriving of a candidate from appearing in any examination of the University and shall be treated as a failure in the examination and all consequences of failure shall follow.
 - (ii) “Year” shall mean the academic year.
- 2.2 Possession of Notes, Books, or any other material or any other act on the part of a candidate, or any other person during the examination, as described in these Ordinances, shall be an act punishable according to the provision contained herein.
3. Soon after the detection of an unfair means case the Superintendent shall ask the candidate to make a statement in writing explaining his conduct. In case the candidate refuses to do so, the fact of his refusal shall be recorded by the

superintendent, which should be attested by at least one supervisor on duty. The onus to justify his refusal to give statement shall be on the candidate.

4. The answer-book in which the use of unfair means is alleged shall be seized by the Superintendent, and the candidate concerned shall be permitted to answer that remaining part of the question paper on a separate answer book. The Superintendent shall forward both the answer books, along with his report in the prescribed form to the Registrar/Controller of Examinations. The candidate shall not forfeit his right to appear in the rest of the examination in subsequent papers.
5. The Synicate shall appoint annually one or more than one Committee, consisting of at least three members to deal with cases of the alleged misconduct and use of unfair means in examination.

The quorum of the Committee shall be two.

6. When the Committee is unanimous, its decision shall be final. If the Committee is not unanimous, the matter shall be referred to the Vice-Chancellor who shall either decide the matter himself or refer it to the Syndicate for decision.
7. The Registrar/Controller of Examination or an Officer authorised by him in this behalf, shall call upon the candidate, alleged to have employed unfair means in the examination or obtaining admission to an examination on a false representation, to show cause why action should not be taken against him under the Ordinances. If the candidate fails to do so within the stipulated period of service of such a notice, the University shall proceed with the case in absentia.
8. All cases of unfair means detected by the supervisory staff and/or flying squad shall be reported to the Registrar/Controller of Examinations who, after processing them, shall put them before the Unfair Means Cases Committee for decision.

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13. If during a University examination, a candidate is found in possession of any material such as :
- (a) Papers, books notes; or
 - (b) Written notes on any part of the clothes worn by the candidate or on any part of his body, or table or desk ; or
 - (c) Foot-rule and or instruments like set-squares, protectors, slide rules etc. with notes written on them ; which is/are relevant to the subject of the examination he may be disqualified from appearing in any University up to two years including that in which he is found guilty, if he is a candidate for an examination held once a year, or for four examinations including that in which he is found guilty, if he is a candidate for an examination held twice a year.

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15. If a candidate during an examination of the University is found swallowing or attempting to swallow a note or paper or runs away with it is guilty of causing disappearance or destroying any such material, he may be disqualified from appearing in any University examination for two years including that in which he is found guilty if he is a candidate for an examination held once a year or for four examination including that in which he is found guilty, of he is a candidate for an examination held twice a year.
25. A candidate found guilty of (a) serious misconduct in the examination hall, or (b) misbehaviour towards the Superintendent or any member, of the supervisory staff outside the examination hall or any other place during the period the examination is being held, may be disqualified from appearing in any University Examination for a period of two to five years according to the nature of his misconduct. But if such a person is not a student as aforesaid he may be declared as not a fit and proper person to be admitted to any future examination of the University for a period of two to five years. Such a case may also be reported to the Police by the Registrar/Controller of Examinations Centre Superintendent/Inspector for an appropriate action.

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27. A candidate who refuses to obey the Superintendent of examination or any other member of the supervisory staff or changes his seat with another candidate or deliberately writes another candidate's Roll number on his answer-book or creates disturbance of any kind during the examination, or otherwise misbehaves in or around the examination hall, will be liable to expulsion by the Superintendent and will be awarded any of the following punishments to the seriousness of the offence :
- (i) Cancellation of the answer-book of the paper concerned ;
 - (ii) Disqualified from appearing in any University Examination which may extend to three years."

(7) The main thrust of the argument in behalf of the petitioner is that the petitioner has been falsely implicated in the UMC case and some allegations have been made against one Dwarka Dass, teacher who was admittedly one of the Supervisory staff deputed in the examination hall where the petitioner was appearing as an examinee. Initially, Dwarka Dass was not a party. On being impleaded as a party, he alongwith the Deputy Superintendent filed a joint written statement denying the allegations of the petitioner, particularly, that he was taken to another hall and a demand of Rs. 10,000/- was made from him. They have also denied the allegations made in the affidavits produced by the petitioner and stated that these students are friends of the petitioner and are trying to help him. However, one thing is clear from the reply that the allegations of the petitioner made in paragraph 6 of the writ petition about some *inter-se* controversy between the petitioner and the said Dwarka Dass have not been disputed either in the reply of Dwarka Dass or in the reply filed by the official respondents. To the contrary, it is stated in the reply of respondents No. 1 to 4 that the controversy between Dwarka Dass and the petitioner has nothing to do with the incident in question, thus admitting some controversy between the petitioner and Dwarka Dass. However, the petitioner has not brought on record any material to indicate that the UMC was influenced by Dwarka Dass. If so, how? In absence of there being any significant and specific averments in the writ petition, the allegation of alleged *mala fide* cannot be looked into.

(8) The other part of the challenge to the impugned order is regarding the non-observance of the principles of natural justice. It is admitted position of the parties that the witnesses were recorded by the UMC in absence of the petitioner and the petitioner was also not permitted to cross-examine them. Reliance upon such unilateral statements, particularly, when they all belong to supervisory staff posted in the examination hall may not be safe as definitely they will have a common purpose to justify the action. However, this does not mean that the petitioner was innocent. Even though from the record produced before this Court, it appears that Unfair Means Committee summoned these witnesses and examined them and considered the statements while imposing punishment upon the petitioner. The Ordinances framed by the University do not provide for a procedure, which, *inter alia* requires the Statements of the witnesses to be recorded in presence of the student accused of use of unfair means or his right to cross-examine the witnesses. But the absence of such a rule does not by itself do away with the right of the student to have the benefit of recording the statements of the witnesses against him in his presence and his right to ask question to them regarding the incident. Mere absence of the rule is not sufficient for non-observance of the principles of natural justice. A fair and impartial enquiry is *sine quo non* for imposing any penalty. Fairness can only be achieved if the evidence is recorded in presence of the delinquent student and he is provided adequate opportunity to question the witnesses in respect of the deposition against him. No such procedure has been adopted. The contention of the respondents that it is only in departmental enquiry that the witnesses should be recorded in presence of the delinquent employee and he be provided an opportunity of cross-examination, but no such procedure is required in a case of unfair means cannot be accepted. Fairness in every action which adversely affects any right of a person is the fundamental necessity. Otherwise, the action is vitiated.

(9) There is another aspect of the matter. The impugned order imposing punishment of deprivation of three years of the academic career of the petitioner is non-speaking. I have examined the order Dated 29th February, 2008 passed by three member Unfair Means Committee as also the order dated 22nd September, 2008 passed by the Appellate Committee. Both these orders reveal that Shri GPS Sahi was a Chairman of the Unfair Means Committee and one Shri S.S. Lamba was its member. Another

member was one Shri R.K. Behl. The appeal was also considered by Shri GPS Sahi as Chairman and Shri S.S. Lamba, Member though a third member Shri Ranbir Singh Sarao was a member of the Appellate Committee. It is a strange phenomenon that two of the members of the Unfair Means Committee sat over their order and examined the validity of their own action. As a matter of fact, they are Judges of their own cause. The petitioner's grievance was against the action of the Unfair Means Committee and the appellate committee. The appeal was also heard by two members of the same Committee who constitute the majority. It is settled principle of law that no one can be judge of his own cause. Hon'ble Supreme Court in the case of **A.K. Kraipak and others versus Union of India and others, (1)** has deprecated such a situation. In the case of **A.K. Kraipak (supra)**, the Hon'ble Supreme Court has observed as under :—

“15. It is unfortunate that Naquishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in a State should be considered as the most -appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All India Service is entitled to great weight. But then under the circumstances it was improper to have included Naquishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every Stage of this participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have

been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naqishbund to keen out his rivals in order to secure his position from further challenge. Natuarly he was also interested in safeguarding his position while preparing the list of selected candidates.”

(10) Again in the case of **Arjun Chaubey versus Union of India and others**, (2) a railway employee was charged of misconduct. Hon’ble Supreme Court while setting aside the order of disciplinary authority made following observations. :—

“5...Evidently, respondent No. 3 assessed the weight of his own accusations against the appellant and passed a judgment which is one of the easiest to pass, namely, that he himself was a truthful person and the appellant a liar. In doing this, respondent No. 3 violated a fundamental principle of natural justice. The main thrust of the charges against the appellant related to his conduct qua respondent 3. Therefore, it was not open to the latter to sit in judgment over the explanation offered by the appellant and decide that the explanation was untrue. No person can be a judge in his own cause and no witness can certify that his own testimony is true. Any one who has a personal stake in an inquiry must keep himself aloof from the conduct of the inquiry. The order of dismissal passed against the appellant stands vitiated for the simple reason that the issue as to who, between the appellant and respondent 3, was speaking the truth was decided by respondent 3 himself.”

(11) Again, in the case of **Cantonment Executive Officer and Anr. versus Vijay D. Wani and Ors.**, (3) the Hon'ble Supreme Court made following observations :—

“7. Therefore, the ratio of all these cases is that a person cannot be a Judge in his own case. Once the disciplinary committee finds the incumbent guilty; they cannot sit in the judgment to punish the man on the basis of the opinion formed by them. The objectivity is the hallmark of a judicial system in our country. The very fact is that the disciplinary committee who found the respondent (herein) guilty participated in decision making process for finding the respondent (herein) guilty and to dismiss him from service is bias which is apparent and real. Consequently, the view taken by the Division Bench of the High Court cannot be faulted.”

(12) The specific allegations of the petitioner are that all the points raised by him in the Memo of appeal have not been considered by the Appellate Committee which fact is evident from the order dated 22nd September, 2008 passed by the Appellate Committee. From the Ordinances framed by the University, it also appears that no detailed procedure which lays a fair and valid procedure has been prescribed for consideration of the cases of Unfair Means. The entire exercise carried out by the Unfair Means Committee is without adopting any fair and settled procedure/norms.

(13) The answer sheet of the petitioner is also placed on record. There is no report by the Deputy Superintendent or the Centre Superintendent on the answer-sheet, though there are separate reports by the Deputy Superintendent, Gurpreet Singh and the Centre Superintendent. The petitioner has been debarred for a period of three years. From the examination of the various ordinances framed by the University, it appears that Ordinance 13 deals with a person who is found in possession of incriminating material. Ordinance 15 deals with a candidate who is found swallowing or attempting to swallow a note or paper or runs away with it or is guilty of causing disappearance or destroying any such material. The penalty prescribed is disqualification for two years. It is only under Ordinance 25 if the candidate

is found guilty of serious misconduct in the examination or misbehaviour towards Superintendent or any member of the Supervisory staff, the disqualification is for a period of 2 to 5 years, according to the nature of his misconduct. From the reply filed, the impugned order or even the record produced before this Court, no specific averments regarding alleged misconduct have been made. What was the misconduct and its extent is difficult to say, in the absence of the set of allegations against the petitioner. The disqualification which varies from two years to five years is dependent upon the nature of his misconduct and unless the allegations are made known to the candidate or at least on record, it is anybody's guess and thus, the circumstances which necessitated imposition of disqualification for three years are not ascertainable. This aspect is sufficient for exercising power of judicial review to scrutinize the validity and adequacy of the punishment imposed. I am conscious of the fact that use of unfair means on an examination is a very serious matter and any candidate indulging in unfair means deserves no leniency or indulgence by the court. At the same time, the Court cannot ignore the fact that the authorities must adopt a transparent and fair procedure which should be evident at least from the record, if not from the impugned order. The action has to be absolutely transparent particularly, when there are some allegations of *mala fide*. Even in absence of allegations of *mala fide*, the action has to be transparent and fair which is absent in the present case. For what has been stated above, I am constrained to exercise power of judicial review.

(14) In view of the above, the impugned order dated 27th May, 2008 (Annexure P-7) and the letter/order dated 1st December, 2008 (Annexure P-11) are hereby set aside to the extent it has debarred the petitioner from appearance in future examinations for a period of three years. The punishment in so far as the examination in question has been imposed shall remain intact. The petitioner has already suffered punishment for more than 1-½ years, he shall now be permitted to appear in the next available examination for the 5th Semester, in accordance with the Ordinances.

(15) Disposed of.