

Before : G. C. Mital & S. S. Grewal, JJ.

PIARA SINGH AND OTHERS,—Appellants.

versus

PUNJABI UNIVERSITY, PATIALA AND ANOTHER,—Respondents.

Letters Patent Appeal No. 7994 of 1989.

19th February, 1991.

(1) *Punjabi University Calendar, Vol. I—S. 9-A(8)—Mass copying at examination centres—Supervisory staff failing to check it—Reports sent to this effect by Special Flying Squad to Vice-Chancellor of University—Vice-Chancellor on being satisfied that integrity of University examination is violated, hence, ordering cancellation of examination and to hold them afresh—Such action—Whether justified.*

*Held*, that the immediate action taken by the Vice-Chancellor was fully justified in order to maintain academic standard of the University and proper conduct of examination, so as to ensure that every examinee is appraised without any assistance from any outside source. The Vice-Chancellor had thus acted correctly in due exercise of his emergency powers. Mere fact that the Syndicate alone was competent to take action in the matter under Ordinance 37 on being satisfied after holding enquiry that the integrity of the University examination has been violated at the aforesaid examination Centres as a consequence of wholesale assistance rendered by the examinees, would not in any manner impinge upon, or take away the emergency powers of the Vice-Chancellor under S. 9-A(8) of the Punjabi University Calendar Volume I. Nor in the circumstances of the present case, it can be reasonably inferred that the Vice-Chancellor had acted beyond his jurisdiction.

(Para 6)

(2) *Principles of natural justice—Mass copying—Report as to—Evidence plain and transparent—Examinees not disqualified—Re-examination ordered—No principles of natural justice are violated.*

*Held*, that since no individual examinee has been disqualified, there was no need for the Vice-Chancellor before ordering fresh examination or cancelling the examination Centres to give all the examinees an opportunity to contest his conclusion which was based on the reports of the Special Flying Squad concerning mass copying at the Centres. There was no need to give the examinees an opportunity of contesting this conclusion because the evidence in the case was perfectly plain and transparent. As such, it cannot be held that either the principles of natural justice have been violated or that the action of the Vice-Chancellor in ordering re-examination or abolishing the two examination Centres was illegal, or void.

(Para 10)

JASBIR SINGH AND OTHERS V. PUNJAB UNIVERSITY, CHANDIGARH AND ANOTHER, A.I.R. 1989 Punjab and Haryana 107.

RAJESH KUMAR V. STATE BOARD OF TECHNICAL EDUCATION (C.W.P. No. 8924 of 1987 decided on 8th February, 1988) (P&H).

(NOT FOLLOWED)

*Petition under Article 226 of the Constitution of India praying that a writ of Certiorari, Mandamus or any other suitable writ, direction or order be issued directing the respondents:—*

(i) to produce the complete records of the case;

(ii) to issue a writ of Certiorari quashing the order dated 16th May, 1989 published in 'The Tribune'.

*Letters Patent Appeal under Clause-X of the Letters Patent against the judgment of the Hon'ble Single Judge, Mr. Justice M. S. Liberhan, passed in the above noted case on June 8, 1990.*

G. K. Chatrath, Advocate, S. Maini, Advocate, A. G. Masih, Advocate, for the appellants.

R. L. Sharma, Advocate, for the respondents.

#### JUDGMENT

S. S. Grewal, J.

(1) This Letters Patent Appeal No. 1094 of 1990 as well as three connected Letters Patent Appeal Nos. 1095 of 1990, 1132 of 1990 and 1218 of 1990, have been filed against the judgment of learned Single Judge of this Court, whereby, Civil Writ Petition Nos. 7994 of 1989, 9367 of 1989 and, 7659 of 1989 seeking quashment of order dated 15th May, 1989 issued by the Controller, Punjabi University, Patiala, abolishing the examination Centres of B.A. Part I and Part II and M.A. Part I and II in some papers on the basis of the reports of Special Flying Squads concerning mass copying by the examinees at Prem Ashram Senior Secondary School, Amritsar and Sant Singh Sukha Singh Senior Secondary School, Amritsar, cancelling all the examinations held from 25th of April, 1989 upto 15th May, 1989 and seeking further directions that the University be restrained from reholding the examinations and the respondents be directed to evaluate the papers in which the petitioners had appeared upto 15th of May, 1989, were dismissed. All the aforesaid Letters Patent Appeals shall be disposed of by one judgment as common questions of law and fact are involved in all these appeals.

(2) Facts relevant for the disposal of these appeals are that on receipt of the report of Special Flying Squad about mass copying indulged into by the examinees at Prem Ashram Senior Secondary

School, Amritsar and Sant Singh Sukha Singh Senior Secondary School, Amritsar and being satisfied that the integrity of University examination has been violated, the Vice Chancellor,—*vide* order dated 12th May, 1989 directed abolition of the aforesaid two examination Centres and ordered re-examination in some papers of B.A. Part I, Part II M.A. Part I and Part II held in April-May, 1989. The action of the Vice Chancellor was confirmed and approved by the Syndicate at its next meeting on 10th of June, 1989. According to the petitioner-appellants who are examinees, the University i.e. the Syndicate alone was competent to take action under Ordinance 37 on being satisfied after holding proper enquiry that the integrity of the University Examination has been violated at the aforesaid examination Centres, as consequence of whole-sale unfair assistance rendered to the examinees; that the impugned orders passed by the Vice Chancellor abolishing the examination Centres and ordering re-examination were void *ab initio* and the decision of the Vice Chancellor was no substitute for decision on the satisfaction of the Syndicate, and that the impugned orders were passed in violation of principle of natural justice and without holding any enquiry are null and void. The validity of the orders being passed with retrospective effect was also challenged.

(3) The respondents in their written statement contended that under Section 9-A (8) of the Punjabi University Calendar Volume I, Vice Chancellor was duly vested to take action when in his opinion an emergency has arisen which required immediate action to be taken and the Vice Chancellor deems such action to be necessary. Exercise of power is subject to the condition that Vice Chancellor has to report the action for confirmation in the next meeting of the Syndicate which in ordinary course would have dealt with the matter. In the present case the action of the Vice Chancellor was approved by Syndicate in its meeting on 10th of June, 1989. It was further pleaded that Vice Chancellor was fully satisfied on the report of the Special Flying Squads that mass copying was going on in the Centre and the Supervisory staff of the Centre had miserably failed to prevent the said mass copying. Thus, in order to take appropriate action to prevent the mass copying an order for cancellation was duly issued by the Vice Chancellor in due exercise of his power and an emergency having arisen, which was affirmed by the Syndicate as envisaged by Ordinance 37 in Chapter 23 of the Punjabi University Calendar 1987 Volume II. Opportunity of hearing was denied in peculiar facts and circumstances of the case. It was further contended that the petitioners have not been punished and their re-examination will be held at the new examination Centre as per orders of the University.

(4) On behalf of the petitioner-appellants, it was mainly contended that the impugned order of cancellation of the examination Centres is liable to be quashed on the ground that only the Syndicate was competent to pass such an order and that too after holding enquiry and that Vice-Chancellor was not competent to pass such an order. Nor subsequent approval of the order of the Vice-Chancellor can in any manner be considered sufficient to hold that the impugned order is legal and valid.

(5) As laid down by the apex Court in *The Marathwada University v. Seshrao Balwant Rao Chavan* (1), the Vice-Chancellor in every University is the consciouskeeper of the University and constitutional ruler. He is the principle executive and academic officer of the University. He is entrusted with the responsibility of overall administration of academic as well as non-academic affairs. For these purposes, the Act confers both express and implied powers on the Vice-Chancellor. The express powers include among others, the duty to ensure that the provisions of the Act, Statutes, Ordinances and Regulations are observed by all concerned. Section 11(3) the Vice-Chancellor has a right to regulate the work and conduct of officers and teaching and other employees of the University section 11(6)(a). He has also emergency powers to deal with any untoward situation (Section 11(4)), is indeed significant. If the Vice-Chancellor believes that a situation calls for immediate action, he can take such action as he thinks necessary though in the normal course he is not competent to take that action. He must, however, report to the concerned authority or body who would, in the ordinary course, have dealt with the matter. That is not all, his pivotal position as the principal executive officer also carries with him the implied power. It is the magisterial power which is plainly to be inferred. This power is essential for him to maintain domestic discipline in the academic and non-academic affairs. In a wide variety of situations in the relationship of tutor and pupil, he has to act firmly and promptly to put down indiscipline and malpractice. It may not be illegitimate if he could call to aid his implied powers and also emergency powers to deal with all such situations.

(6) In the instant case the machinery for holding examination has failed to check the mass copying. After getting information in this regard on the basis of the Reports of the Flying Squad that mass copying was going in the aforesaid Centres and supervisory staff there had miserably failed to prevent the mass copying by the examinees, the Vice-Chancellor took timely action by invoking his

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(1) A.I.R. 1989 S.C. 1582.

emergency powers under Section 9-A(8) of the Punjabi University Calendar Volume I and ordered cancellation of the Centres and holding of the examinations afresh. The action taken in the matter by the Vice-Chancellor was reported for confirmation in the next meeting of the Syndicate, in which the impugned order passed by the Vice-Chancellor was duly approved by the Syndicate. Thus the immediate action taken by the Vice-Chancellor was fully justified in order to maintain academic standard of the University and proper conduct of examination, so as to ensure that every examinee is appraised without any assistance from any outside source. The Vice-Chancellor had thus acted correctly in due exercise of his emergency powers. Mere fact that the Syndicate alone was competent to take action in the matter under ordinance 37 on being satisfied after holding enquiry that the integrity of the University examination has been violated at the aforesaid examination Centres as a consequence of wholesale assistance rendered by the examinees, would not in any manner impinge upon, or, take away the emergency powers of the Vice Chancellor under Section 9-A(8) of the Punjabi University Calendar Volume I. Nor in the circumstances of the present case, it can be reasonably inferred that the Vice-Chancellor had acted beyond his jurisdiction.

(7) Faced with this situation, it was further contended on behalf of the appellants that the decision of the Vice-Chancellor to order re-examination, which is punitive in nature was passed without giving any opportunity to the examinees to be heard or to lead evidence in support of their case. The action of the Vice-Chancellor in this regard has violated the principle of natural justice and on that score the impugned orders passed by the Vice Chancellor cannot be legally sustained.

(8) Reliance in this respect was placed on the authority of their Lordship of the Supreme Court in *Board of High School and Intermediate Education U.P. Allahabad v. Ghanshyam Das Gupta and others* (2), wherein it was observed that many of the powers of the Committee under Chapter VI are of administrative nature; but where quasi-judicial duties are entrusted to an administrative body like this it becomes a quasi-judicial body for performing these duties and it can prescribe its own procedure so long as the principles of natural justice are followed and adequate opportunity of presenting his case is given to the examinee.

(9) In the aforesaid authority the examination results of three candidates were cancelled and it was held that they should have

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(2) A.I.R. 1962 S.C. 1110.

received an opportunity of explaining their conduct. It was also said that even if the enquiry involved a large number of persons the Committee should frame proper regulations for the conduct of such inquiries but not deny the opportunity. This authority was considered in subsequent authority of the apex Court in *Bihar School Examination Board v. Subhas Chandra Sinha and others* (3), and it was observed as follows :—

“Surely, it was not intended that where the examination as a whole was vitiated, say by leakage of papers or by destruction of some of the answer books or by discovery of unfair means practised on a vast scale that an inquiry would be made giving a chance to every one appearing at that examination to have his say. What the Court intended to lay down was that if any particular person was to be proceeded against, he must have a proper chance to defend himself and this did not obviate the necessity of giving an opportunity even though the number of persons proceeded against was large. The Court was then not considering the right of an examining body to cancel its own examination when it was satisfied that the examination was not properly conducted or that in the conduct of the examination the majority of the examinees had not conducted themselves as they should have. To make such decisions depend upon a full-fledged judicial inquiry would hold up the functioning of such autonomous bodies as Universities and School Board. While we do not wish to wittle down the requirements of natural justice and fair play in cases where such requirement may be said to arise, we do not want that this Court should be understood as having stated that an inquiry with a right to representation must always precede in every case, however, different.”

It was further observed in aforesaid authority that no principle of natural justice was violated in this case. The Board through its Chairman and later itself reached the right conclusion that the examinations at this Centre had been vitiated by practising unfair means on a mass scale and the Board had every right to cancel the examination and order that a fresh examination be held. There was no need to give the examinees an opportunity of contesting this conclusion because the evidence in the case was perfectly plain and transparent.

(10) The authority in *Bihar School Examination Board* (supra) is fully applicable to the facts and circumstances of the present case.

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(3) A.I.R. 1970 S.C. 1269.

Since no individual examinee has been disqualified, there was no need for the Vice-Chancellor before ordering fresh examination or cancelling the examination Centres to give all the examinees an opportunity to contest his conclusion which was based on the reports of the Special Flying Squad concerning mass copying at the Centres, referred to in the earlier part of the judgment. In the instant case, none of the examinees including appellants have been disqualified or their results cancelled by the University, on the basis of the reports of the Flying Squad concerning mass copying. Therefore, it cannot be held that either the principles of natural justice have been violated, or, that the action of the Vice-Chancellor in ordering re-examination or abolishing the two examination Centres was illegal, or, void.

(11) The learned counsel for the appellants, however, placed reliance on Division Bench authority of this Court in *Jasbir Singh and others v. Panjab University Chandigarh and another* (4). In that particular case, on the report of mass copying at some of the Centres, the Examination Reforms Committee had ordered re-examination of the candidates of those Centres. Besides taking other action, the Committee had further recommended that the re-examination should be conducted preferably at Chandigarh. In para 4 of the report, it was observed as follows :—

“The decision to order re-examination and other ancillary decisions, punitive and reformatory in character, have to be taken by the Syndicate. Recommendations for the purpose, however, weighty by any other body cannot be a substitute to the decision on satisfaction of the Syndicate. It is crystal clear that the Syndicate has not made a decision and without that decision no action could be taken by the University.”

(12) In the aforecited authority the action taken in the matter was neither considered nor approved by the Syndicate, and, the Vice-Chancellor had merely expressed his views in writing that he was in agreement with the solution suggested by the Examinations Reforms Committee, whereas, in the present case, the decision has been taken by the Vice-Chancellor under his emergency powers and his decision was subsequently approved by the Syndicate. Reliance in the aforecited authority of Division Bench in *Jasbir Singh's case* (supra) was place on a Single Bench decision of this Court in *Rajesh Kumar v. State Board of Technical Education* (5).

(4) A.I.R. 1989 (P&H) 107.

(5) C.W.P. No. 8929 of 1987 decided on 8th February, 1988 (P&H).

(13) The view expressed in the *Jasbir Singh's case* and *Rajesh Kumar's case* (supra) that it was necessary to give personal hearing to the concerned examinees before ordering re-examination on the ground of mass copying, without taking any action against any such individual examinee (like disqualification), with utmost respect to the learned Judges who decided these two cases, cannot be followed, as the view expressed therein runs counter to the view expressed by their Lordships of the Supreme Court in *Bihar School Examination Board's case* (supra), which authority was not considered in the aforesaid two authorities. Moreover, the menace of mass copying in the examinations conducted by the Universities or the School Boards, is on increase and is likely to assume alarming proportions in future, if the same is not curbed in time by the competent authorities, who are duty bound to maintain academic standards in the country.

(14) For the foregoing reasons, we do not find any merit in either of the appeals and the same are hereby dismissed. As substantial point of law was involved both the parties shall bear their own costs.

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J.S.T.

Before : G. C. Mittal, A.C.J. & H. S. Bedi. J.

STATE OF PUNJAB AND OTHERS,—Appellants.

versus

M/S PARDEEP AGGARBATTI, SHIVALA ROAD, LUDHIANA,  
—Respondent.

Letters Patent Appeal No. 644 of 1984.

27th March, 1991.

*General Sales Tax Act, 1948—S. 5(1)—Tax on Dhoop & Aggarbatties—Entry 16-A of Schedule of Act specifically mentions perfumery as including Dhoop & Aggarbatti—According to proviso to S. 5(1), tax on goods mentioned in Schedule 'A' to be 10 per cent—Tax to be paid for sale of Dhoop & Aggarbatti is at rate of 10 per cent.*

*Held.* that the judgment in Amir Chand's case was, therefore, based on the word 'luxury' which occurred in the proviso to sub-section (1) of S. 5 of the Act. As already stated above, the word 'luxury' was deleted from the proviso to sub-section (1) of S. 5 with retrospective effect and, as such, the judgment of the Division Bench is no longer applicable to the facts of the case. As a matter of fact the first of the two qualifications which were required to be fulfilled