

Court No. - 5

Case :- WRIT - C No. - 14950 of 2020

Petitioner :- Kriti Giri

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shree Prakash Giri, Sujeet Sinha

Counsel for Respondent :- C.S.C.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Sujeet Sinha, learned counsel for the petitioner, Sri Pratik Chandra, learned counsel for respondent nos.2 & 3 and Sri Shailendra Singh, learned standing counsel appearing for respondent no.1.

2. The present writ petition has been filed principally seeking to raise a challenge to an order/office memorandum dated 06.08.2020 issued by the respondent no.3/Examination Controller of the university whereby the petitioner has been communicated that her semester examination for the session 2019-2020 has been cancelled and that she would appear in the said semester examination during the session 2020-2021.

3. Upon the writ petition being taken up on 13.10.2020, this Court noticed the facts of the case and passed an order in the following terms:-

"...It is contended that the petitioner is a student of L.L.B., IIIrd Semester and during the examination of Trust & Equity, she was found using unfair means. An explanation was sought by a letter of the Examination Controller of the concerned University on 26th February, 2020. The petitioner submitted explanation through E-mail on 05.12.2019 and through Registered Post on 09.12.2019 denying the charges of unfair means. By the order dated 06.08.2020, 194 students had been held guilty of using unfair means and petitioner is placed at serial no.182 of the said list which has been brought on record as Annexure No.7 to this writ petition.

It is contended that the Controller of Examination has not decided the explanation so submitted by the petitioner and by a general order the explanation of 194 students has been

WRIT-C No.14950 of 2020

rejected as using of unfair means on 06.08.2020 along with list of the candidates.

Matter requires consideration.

Let a counter affidavit be filed by the concerned University within a week.

Put up this case as fresh on 22.10.2020."

4. Counter affidavit on behalf of respondent nos.2 and 3 has been filed by the Deputy Registrar (Legal) of the respondent university today which is taken on record.

5. Counsel for the petitioner submits that the relevant material is already on record alongwith the writ petition and that he does not wish to file a rejoinder affidavit.

6. With the consent of the parties the writ petition is taken up for final disposal.

7. As per the pleadings in the writ petition, charges of use of unfair means were levelled against the petitioner in regard to the paper of "Trust & Equity" of the L.L.B. 3rd semester examination. It is submitted that the petitioner had submitted a detailed representation by means of an email dated 05.12.2019 and also by registered post dated 09.12.2019 addressed to the Examination Controller of the respondent university. In the representation the petitioner had submitted her explanation and denied the allegation of use of unfair means.

8. Attention of this Court has been drawn to the office memorandum dated 26.02.2020, issued by the respondent no.3/Examination Controller of the University enclosing therewith a list of candidates against whom there were charges of use of unfair means and containing directions to the Principals of the concerned colleges to obtain the explanation of the candidates so as to ensure that before any action is taken the

WRIT-C No.14950 of 2020

version of the candidates may be considered in consonance with the principles of natural justice. The office memorandum dated 26.02.2020 reads as under:-

“पत्रांक: प्रो0रा0सि0वि0वि0 / प0नि0का0 / 589 / 2020 दिनांक: 26 फरवरी, 2020

कार्यालय—ज्ञाप

विश्वविद्यालय की विषम सेमेस्टर परीक्षा—नवम्बर, 2019 के दौरान जिन परीक्षार्थियों को व्यक्तिगत/सामूहिक रूप से अनुचित साधन प्रयोग करते हुए आरोपित किया गया है, उनको प्राकृतिक न्याय के अनुपालन में उचित कार्यवाही करने से पूर्व उनका पक्ष जानने के लिए सम्बन्धित परीक्षार्थियों की सूची प्रेषित की जा रही है।

अतएव संलग्न सूची में उल्लिखित परीक्षार्थियों तथा उनके महाविद्यालय के प्राचार्यों से मुझे यह कहने का निदेश हुआ है कि विश्वविद्यालय द्वारा उपलब्ध कराये गये अनुचित साधन प्रयोग में आरोपित परीक्षार्थियों को अपने स्तर से सूचित करें तथा 10 कार्य दिवसों के अन्तर्गत उनका स्पष्टीकरण विश्वविद्यालय के डाक/पत्र प्राप्ति कार्यालय में हार्डकापी अथवा विश्वविद्यालय की ई—मेल: coeasua@gmail.com पर उपलब्ध कराना सुनिश्चित करें, जिससे कि उनके प्रकरणों का समय से निस्तारण सुनिश्चित किया जा सके। सम्बन्धित परीक्षार्थियों की सूची विवरण सहित संलग्न है।

संलग्नक— विषम सेमेस्टर परीक्षा— नवम्बर, 2019 में अनुचित साधन प्रयोग से सम्बन्धित परीक्षार्थियों की सूची।”

9. In response the petitioner submitted another reply dated 03.03.2020 reiterating the facts stated in the explanation furnished by her through email dated 05.12.2019 and registered post dated 09.12.2019.

10. Thereafter, the impugned order/office memorandum dated 06.08.2020 has been issued by the Incharge, Controller of Examination of respondent university whereby the decision of the “unfair means committee” has been communicated to the candidates. The name of the petitioner finds mention at serial no.182 of the list appended to the aforesaid office memorandum and the decision of the unfair means committee reads as under:-

WRIT-C No.14950 of 2020

“छात्र/छात्रा की सत्र 2019–20 की विषम सेमेस्टर परीक्षा निरस्त की जाती है। वह सत्र 2020–2021 में सम्बन्धित विषम सेमेस्टर की परीक्षा में सम्मिलित होगा/होगी।”

11. The contention of the learned counsel for the petitioner is that the decision of the unfair means committee, as communicated in terms of the office memorandum dated 06.08.2020, does not indicate any reason for cancelling the 3rd semester examination of the petitioner and there is absolutely no consideration of the reply/explanation which had been furnished by the petitioner. It is submitted that the entire exercise by the respondent university is in violation of the principles of natural justice and cannot be legally sustained.

12. The aforementioned contention was noticed by this Court in its order dated 13.10.2020 and thereafter the respondent university was directed to file a counter affidavit. In response thereof the counter affidavit which has been filed today on behalf of respondent nos.2 and 3 states that the unfair means committee considered the case of 300 students and finally issued the order dated 06.08.2020 against 194 candidates while 106 candidates were found not liable by the unfair means committee. There is absolutely no whisper in the counter affidavit that the reply of the petitioner containing her explanation was considered by the unfair means committee before a final decision was taken. The counter affidavit merely reiterates the allegations in regard to which the petitioner had given her explanation by means of the e-mail dated 05.12.2019 and also vide letter dated 09.12.2019 sent by registered post.

13. The decision of the unfair means committee, which has been communicated to the petitioner by means of the office memorandum dated 06.08.2020 only states that the semester examination of the petitioner for the session 2019-2020 stands

WRIT-C No.14950 of 2020

cancelled and that the petitioner would appear in the semester examination to be held for the session 2020-2021. Although the office memorandum contains a recital to the effect that the representations submitted by the candidates had been considered, the remark mentioned against the name of the petitioner in the list appended thereto does not contain any reason for the decision arrived at by the unfair means committee. The office memorandum contains a general order in respect of the list of 194 candidates appended therewith, without any indication that the explanation submitted by the petitioner wherein she had denied the charges of use of unfair means had been considered by the unfair means committee before coming to its decision.

14. No material has been placed on record to demonstrate that the directives contained in the earlier office memorandum dated 26.02.2020 issued by the Examination Controller of the respondent university with regard to consideration of the reply/explanation of the candidates concerned in accordance with the principles of natural justice while examining the charges of unfair means against them, has been followed.

15. Despite time having been granted to the respondent authorities of the university to submit their version in respect of the contention of the petitioner that her reply/explanation had not been considered by the “unfair means committee” while holding her guilty of the charges, the counter affidavit which has been filed also does not refer to any material to show that the reply/explanation which had been called for by the respondent university itself in terms of its earlier office memorandum dated 26.02.2020, was considered by the unfair means committee while arriving at the decision under which the examination of

WRIT-C No.14950 of 2020

the petitioner for the semester examination has been cancelled.

16. It is no doubt true that ordinarily the Court would not interfere in decisions taken by the educational authorities particularly with regard to a matter relating to examinations and that the standards and the purity of the examination process is to be maintained and with this objective in mind the action taken by the educational institutions in cases where unfair means have been adopted, is usually sustained.

17. At the same time, it cannot be denied that any action taken by the educational authorities in this regard is required to conform to standards of fairness and the action taken should be free from arbitrariness. This is moreso in a case where the consequence of any decision declaring a candidate as having used unfair means has the effect of tainting his/her academic career with a blot and has further adverse civil consequences. It is for this reason that before holding the examinee guilty of the charges of use of unfair means his/her explanation ought to be called for and accorded consideration.

18. This consideration of the explanation furnished by the candidate is required to be made in a manner which is *bona fide* and should not be an empty formality.

19. The applicability of the principles of natural justice in matters relating to an enquiry into the use of unfair means in examinations fell for consideration before a Full Bench of this Court in **Triambak Pati Tripathi v The Board of High School and Intermediate Education, U.P., Allahabad**¹, and it was held that the essential principles which are to be observed in this regard include giving of notice of the charges and an opportunity

¹ AIR 1973 All 1

WRIT-C No.14950 of 2020

to make a representation to explain the allegations and that the proceedings to be conducted by the authority should be in good faith and should not be biased.

20. A similar view had been taken in an earlier decision in **Board of High School and Intermediate Education, U.P., Allahabad and another v Bagleshwar Prasad and another**², which was also a case in respect of charges of use of unfair means, and it was held that enquiries in this regard should be fair and students against whom charges are framed must be given adequate opportunity to defend themselves and principles of natural justice should be followed.

21. The principle that natural justice requires the procedure to be fair in all circumstances was emphasised in **Wiseman and another v Borneman and others**³ and it was stated by **Lord Morris of Borth-Y-Gest**, as follows:-

“The principles and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is only fair play in action.”

22. Having regard to the foregoing discussion the necessary implication would be that a person proceeded against is to be informed about the material on the basis of which the allegations made against him are founded so that he may have an opportunity of furnishing his explanation and putting forward his version. Thereafter it would be for the authority concerned to evolve its own procedure so as to afford an opportunity to the person concerned. The procedure may vary with the facts, circumstances and nature of the case but the authority would be required to accord consideration to the explanation furnished and to take a decision in a fair and non-partisan manner.

² AIR 1966 SC 875

³ (1969) 3 WLR 706

WRIT-C No.14950 of 2020

23. In the present case no material has been placed on record by the respondents to demonstrate that the authorities have accorded consideration to the explanation furnished by the petitioner against whom an order having adverse civil consequences has been passed.

24. Sri Pratik Chandra, learned counsel appearing for respondent nos.2 and 3 has not disputed the aforesaid legal and factual position and fairly submits that the reply/explanation submitted by the petitioner would be duly considered by the respondent no.3 within a period of two months from today and a fresh order would be passed.

25. Having regard to the aforementioned facts and circumstances and as agreed to by the counsel for the parties, the writ petition is disposed of leaving it open to respondent nos.2 and 3 to pass an order after according due consideration to the reply/explanation submitted by the petitioner within a period of two months from the date of presentation of a copy of this order. The order/office memorandum dated 06.08.2020, in so far as it relates to petitioner, shall abide by the fresh order to be passed as aforesaid.

26. It is made clear that this Court has not expressed its view with regard to the merits of the claim of the petitioner.

Order Date :- 22.10.2020

Imroz/Shahroz

(Dr. Y.K. Srivastava,J.)