Board of High School & Intermediate Education, U. P., Allahabad

Vs

Ghanshyam Das Gupta and Others

Civil Appeal No. 132 of 1959

(S. K. Das, A. K. Sarkar, K. Subha Rao, K. N. Wanchoo, N. Rajgopala Ayyangar JJ)

06.02.1962

JUDGMENT

WANCHOO, J. -

This is an appeal on a certificate granted by the Allahabad High Court. The brief facts necessary for present purposes are these. The three respondents were students of G.S. Hindu Intermediate College at Sikandrarao and appeared at the Intermediate (Commerce) Examination conducted by the appellant in the year 1954. On June 12, 1954, the result of the examination was published in newspapers and the three respondents passed in the second division. Thereafter they prosecuted further studies. But in December 1954, their fathers and guardians received information from the Principle of the G.S. Hindu Intermediate College that the Examinations' Committee of the appellant (hereinafter referred to as the Committee) had cancelled the result of the respondents for the examination of 1954 and further that they had been debarred from appearing at the examination of 1955. Thereupon the respondents filed a write petition in the High Court contending that the Committee had never afforded any opportunity to them to rebut the allegations made against them and that they were never informed about the nature of the unfair means used by them in the said examination and the first thing they come to know was the resolution of the Committee cancelling their results and debaring them from appearing in the examination of 1955. They therefore contended that they were entitled to an opportunity being afforded to them to meet the case against them of using unfair means at the examination before the appellant took action against them by cancelling their results and debarring them from appearing at the examination of 1955. The procedure thus adopted by the appellant was said to be in violation of the principles of natural justice inasmuch as they were given no opportunity whatsoever to defend themselves and to show cause against the action contemplated against them. It was further contended that the procedure adopted by the appellant violated the provisions of the U.P. Intermediate Education Act, No. II of 1921 (hereinafter referred to as the Act) and the U.P. Education Code, and therefore, the resolution cancelling their results and debarring them from appearing in the later examination was without jurisdiction and illegal. They therefore prayed for a proper writ or order cancelling the resolution of the appellant.

The appellant opposed the application and its case was that the respondents had used unfair means at the examination and their cases were reported to the Committee under the Regulations and the Committee had acted under the powers conferred on it under the Act and the Regulations framed thereunder after a thorough inquiry. It was not disputed, however, that no opportunity had been afforded to the respondents to rebut the allegations against them in the inquiry made by the Committee which resulted in the resolution cancelling the results of the examination.

A large number of contentions appear to have been urged in the High Court; but we are here only concerned with one of them, namely, whether the respondents were entitled to a hearing before the appellant decided to cancel the results. The contention on behalf of the respondents before the learned Single Judge was that the appellant was under a duty to act judicially and therefore the respondents should have been given a hearing before any order was passed against them. The learned Single Judge held that no duty was cast on the Committee to act judicially and there was no statutory obligation on the Committee to give an opportunity to every examinee to be heard; therefore he rejected the petition.

The respondents then went in appeal which was heared by Dayal and Brijmohan Lall, JJ., who however differed. Brijmohan Lall, J., was of opinion that the Committee was not required to act judicially or quasijudicially when it considered cases of this kind and was acting merely administratively; he nevertheless was of the opinion that one of the rules of natural justice contained in the maxim audi alteram partem would apply in this case, even though the Committee was acting administratively. He was therefore in favour of allowing the appeal. Dayal J., agreed with the view of Brijmohan Lall, J., that in the present case no duty was cast on the Committee to act judicially and that the action of the Committee was merely administrative. He however did not agree that the Committee acted in violation of the principles of natural justice inasmuch as it did not give a hearing to the respondents. He was of the view that as the Committee was acting merely administratively it was not bound to give a hearing, as the maxim audi alteram partem applied only to judicial or quasijudicial tribunals. The two learned Judges also differed on two other points with which we are not concerned. Eventually they referred three questions to be answered by another learned Judge and one of these questions was whether the failure of the Committee to provide an opportunity to the respondents of being heard vitiated its order, which was of an administrative nature.

The matter then came before a third learned Judge, Agarwala, J. He was doubtful whether the view of the Bench that there was no duty cast on the Committee to act judicially in the present case was correct; but as on that matter the two learned Judges were in agreement, he dealt with the case on the basis that the Committee was acting merely administratively. Even so, he came to the conclusion that the respondents were entitled to a hearing and agreed with the view of Brijmohan Lall, J. Consequently, the appeal was placed before the Bench again and in accordance with the opinion of the third Judge it was allowed. Then followed an application by the appellant for leave to appeal to this court, which was granted; and that is how the matter has come up before us.

The main contention on behalf of the appellant is that the High Court was wrong in the view it took that an opportunity for hearing was necessary in this case even though the Committee acted merely administratively. It is contended that where a body is acting merely administratively, it is not necessary that it should give a hearing to a party who might be affected by its decision and that the principles of natural justice, including the maxim, audi alteram partem, apply only to judicial or quasi-judicial bodies, i.e., bodies on whom a duty is cast to act judicially. It is submitted that where no such duty is cast on a body and it is acting merely administratively there is no necessity for it to hear the person who might be affected by its order. The respondents on the other hand contend that though the final decision of the High Court is correct, the High Court was not right in holding that the Committee was acting merely administratively in a matter of this kind; they contend that considering the entire circumstances which operate in cases of this kind, the High Court should have held that there was a duty to act judicially and therefore it was necessary to give an opportunity to the respondents to be heard before action was taken against them. It is submitted that the mere fact that there was nothing express in the Act or the Regulations framed thereunder which might make it

obligatory for the Committee to call for an explanation and to hear the examinees whose cases it was required to enquire into was not wholly determinative of the question whether a duty was cast on the Committee in cases like this to act judicially.

The first question therefore which falls for consideration is whether any duty is cast on the Committee under the Act and Regulations to act judicially and therefore it is a quasi-judicial body. What constitutes "a quasi-judicial act" was discussed in the Province of Bombay v. Kusaldas S. Advani ((1950) S.C.R. 621, 725.). The principles have been summarised by Das, J. (as he was then), at p. 725 in these words :-

> "The principles, as I apprehend them are :
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> (i) that if a statute empowers an authority, not being a court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie and in the absence of any thing in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and
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> (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

In other words, while the presence of two parties besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially."

These principles have been acted upon by this Court in latter cases : see Nagendra Nath Bora v. The Commissioner of Hills Division & Appeals, Assam ((1958) S.C.R. 1240.), Shri Radheshyam Khare v. The State of Madhya Pradesh ((1959) S.C.R. 1440.), Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation ((1959) Supp. 1 S.C.R. 319.), and Shivji Nathubhai v. The Union of India ((1960) 2 S.C.R. 775.). Now it may be mentioned that the statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively : (vide observations of Parker, J. in R. v. Manchester Legal Aid Committee) ((1952) 2 Q.B. 413.).

We must therefore proceeded to examine the provisions of the Act and the Regulations framed thereunder in connection with matters of this kind to determine whether the Committee can be said to have the duty to act judicially when it deals with cases of examinees using unfair means in

examination halls. Under s. 7 of the Act, the Board constituted thereunder has inter alia powers to prescribe courses of instruction, to grant diplomas and certificates, to conduct examinations to admit candidates to its examinations to publish the results of its examinations, and to do all such things as may be requisite in order to further the objects of the Board as a body constituted for regulating and supervising High School and Intermediate education. Under s. 13, the Board has power to appoint and constitute various committees, including the examinations' committee, and under s. 14, the Board can delegate its powers by Regulations to such committees. Section 15 gives power to the Board to make Regulations with respect to the constitution, powers and duties of committees, the conduct of examinations, and all matters which by the Act may be provided for by Regulations. Section 20 gives power to the Board and its committees to make bye-laws consistent with the Act and the Regulations.

It will be clear from the above that the Act makes no express provisions as to the powers of the committees and the procedure to be adopted by them in carrying out their duties, which are left to be provided by Regulations and we are therefore to look to the Regulations framed under s. 15 to see what powers and duties have been conferred on various committees constituted under the Regulations. Section 13 (1) makes it incumbent on the Board to appoint the Committee and Chap. VI of the Regulations deals with the powers and duties of the committee. Rule (1)(1)of Chap. VI with which we are particularly concerned reads as follows :-

> "It shall be the duty of the Examinations' Committee, subject to sanction and control of the Board."

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> "(1) to consider cases where examinees have concealed any fact or made a false statement in their application forms or a breach of rules and regulations to secure undue admission to an examination or used unfair means or committed fraud (including impersonation) at the examination or are guilty of a moral offence or indiscipline and to award penalty which may be one or more of the following :-
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> (1) withdrawal of certificate of having passed the examination;
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> (2) cancellation of the examination;
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> (3) exclusion from the examination."

There is however no provision in Chap. VI as to how the Committee will carry out the duty imposed on it by r.1(1). Further, there is no express provision in the Act or the Regulations casting a duty on the Committee to act judicially when exercising its powers under r. 1 (1); and the question whether the Committee has to act judicially when exercising these powers will have to be decided on an examination of all the circumstances relevant in the matter. At the same time, there is nothing express in the Act from which it can be said that the Committee is not under a duty to act judicially. It is true that there is no procedure provided as to how the Committee will act in exercising its powers under r. 1(1) and it is further true that there is no express provision in that rule requiring the Committee to call for an explanation from the examinees concerned and to hear the examinees whose cases it is required to consider. But we are of opinion that the mere fact that the Act or the Regulations do not make it obligatory on the Committee to call for an explanation and to here the examinee is not conclusive on the question whether the Committee acts as a quasi-judicial body in

exercising its powers under r. 1(1). Even though calling for an explanation and hearing the examinee may not have been made expressly obligatory by the Act or the Regulations, it is obvious that the Committee when it proceeds to decide matters covered by r. 1(1) will have to depend upon materials placed before it, in coming to its decision. Before the Committee decides to award any penalty it has to come to an objective determination on certain facts and only when it comes to the conclusion that those facts are established that it can proceed to punish the examinee concerned. The facts which the Committee has to find before it takes action are -

(i) whether the examinee has concealed any fact or made a false statement in his application form; or

(ii) whether the examinee has made a breach of the Rules and Regulations to secure undue admission to an examination; or

(iii) whether the examinee has used unfair means at the examination; or

(iv) whether the examinee has committed fraud (including impersonation) at the examination; or

(v) whether the examinee is guilty of moral offence or indiscipline.

Until one or other of the five facts is established before the Committee, it cannot proceed to take action under r. 1(1). In order to come to the conclusion that one or other of these facts is established, the Committee will have to depend upon materials placed before it, for in the very nature of things it has no personal knowledge in the matter. Therefore, though the Act or the Regulations do not make it obligatory on the Committee to call for an explanation and hear the examinee, it is implicit in the provisions of r. 1(1) that the Committee must satisfy itself on materials placed before it that one or other of the facts is established to enable it to take action in the matter. It will not be possible for the Committee to proceed at all unless materials are placed before it to determine whether the examinee concerned has committed some misconduct or the other which is the basis of the action to be taken under r. 1(1). It is clear therefore that consideration of materials placed before it is necessary before the Committee can come to any decision in the exercise of its powers under r. 1(1) and this can be the only manner in which the Committee can carry out the duties imposed on it.

We thus see that the Committee can only carry out its duties under r. 1(1) by judging the materials, placed before it. It is true that there is no lis in the present case, in the sense that there are not two contesting parties before the Committee and the matter rests between the Committee and the examinee; at the same time considering that materials will have to be placed before the Committee to enable it to decide whether action should be taken under r. 1(1), it seems to us only fair that the examinee against whom the Committee is proceeding should also be heard. The effect of the decision of the Committee may in an extreme case blast the career of a young student for life and in any case will put a serious stigma on the examinee concerned which may damage him in later life. The nature of misconduct which the Committee has to find under r. 1(1) in some cases is of a serious nature, for example, impersonation, commission of fraud, and perjury; and the Committee's decision in matters of such seriousness may even lead in some cases to the prosecution of the examinee in courts. Considering therefore the serious effects following the decision of the Committee and the serious nature of the misconduct which may be found in some cases under r. 1(1), it seems to us that the Committee must be held to act judicially in circumstances as these. Though therefore there is nothing express one way or the other in the Act or the Regulations casting

a duty on the Committee to act judicially, the manner of the disposal, based as it must be on materials placed before it and the serious effects of the decision of the Committee on the examinee concerned, must lead to the conclusion that a duty is cast on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees, before it can take any action in the exercise or its power under r. 1(1). We are therefore of opinion that the Committee when it exercises its powers under r. 1(1) is acting quasi-judicially and the principles of natural justice which require that the other party, (namely, the examinee in this case) must be heard, will apply to the proceedings before the Committee. This view was taken by the Calcutta High Court in Dipa Pal v. University of Calcutta, (A.I.R. 1952 Cal. 594.) and B.C. Das Gupta v. Bijoyranjan Rakshit, (A.I.R. 1953 Cal. 212.) in similar circumstances and is in our opinion correct.

It is urged on behalf of the appellant that there are a large number of cases which come up before the Committee under r. 1(1), and if the Committee is held to act judicially as a quasi-judicial tribunal in the matter it will find it impossible to carry on its task. This in our opinion is no criterion for deciding whether a duty is cast to act judicially in view of all the circumstances of the case. There is no doubt in our mind that considering the totality of circumstances the Committee has to act judicially when taking action under r. 1(1). As to the manner in which it should give an opportunity to the examinee concerned to be heard, that is a matter which can be provided by Regulations or Bye-laws if necessary. As was pointed out in Local Government Board v. Alridge ((1915) A.C. 120.), all that is required is that the other party should have an opportunity of adequately presenting his case. But what the procedure should be in detail will depend on the nature of the tribunal. There is no doubt that many of the powers of the Committee under Chap. VI are of administrative nature; but where quasi-judicial duties are entrusted to 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. It is not however necessary to pursue this matter further, for it is not in dispute that no opportunity whatsoever was given to the respondents in this case to give an explanation and present their case before the Committee. We are therefore of opinion that though the view of the High Court that the Committee was acting merely administratively when proceeding under r. 1(1) is not correct, its final decision allowing the writ petition on the ground that no opportunity was given to the respondents to put forward their cases before the Committee is correct. We therefore dismiss the appeal. No order as to, in the circumstances.

Appeal dismissed.

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