

PATNA HIGH COURT

Ajit Singh

Vs

Ranchi University

Misc. Judl. Cases Nos. 818 and 846 of 1963

(V. Ramaswami, C.J. and R.K. Choudhary, J.)

15.01.1964

JUDGMENT

V. Ramaswami, C.J.

1. In these two applications which have been heard together a common question of law arises for determination, namely, whether the resolution of the Syndicate of the Ranchi University, Annexures-1 and 1(1) to the counter-affidavit, and the order of the Ranchi university Annexure 1 to the counter-affidavit, debarring the petitioners from appearing at any University examination for the period noted against each of them, is illegal, ultra vires and without jurisdiction on the ground that there has been a violation of the principle of natural justice.

2. Cause has been shown on behalf of the respondents to whom notice of the rule was ordered to be given in both these applications.

3. The resolution of the Syndicate is based upon paragraph 21 of Ordinance IV which states as follows :-

"21, The syndicate may on its own initiative or on the report of any Principal and after such enquiry as may be deemed necessary, rusticate a student for any period, if the student is held guilty of gross misconduct or misbehavior or has been found using any unfair means at any University examination."

4. On behalf of the petitioners the main argument put forward by learned Counsel is that there was no inquiry held by the Unfair Means Scrutiny Committee with regard to the allegation leveled against the petitioners, and though the petitioners requested the members of the Committee to disclose the basis and the materials upon which the allegation was based the members of the Committee declined to give the petitioners the materials are the basis of the allegation. A statement to this effect is made in paragraph 9 of the application in Miscellaneous Judicial Case No. 818 of 1963 and also in Miscellaneous Judicial Case No. 846 of 1963. In the counter-affidavit filed on behalf of the respondents there is no effective denial of the allegations

made by the petitioners. In paragraph 16 of the counter-affidavit the respondents state that the petitioners were individually informed of the charge against them at the time of the inter view, but it is not stated by the respondents that the petitioners were shown the answer books or the other materials upon which the Unfair Means Scrutiny Committee came to the conclusion that the petitioners were guilty or the charge of using unfair means in the examination hall. In paragraphs 10 and 11 of the application it is also alleged by the petitioners that the invigilators and other professors who were examined by the Committee were examined behind the back of the petitioners and further the petitioners were not given any opportunity to cross-examine them. There is no reply to this allegation in the counter-affidavit filed on behalf of the respondents.

In these circumstances we think that the present case falls within the principle of the decision of the Supreme Court in *Board of High School and Intermediate Education, U.P. v. Ghanshyam Das Gupta*¹. It was pointed out in that case by the Supreme Court that if the statutory authority has power to do any act which would prejudicially affect the subject, then, although there were not two parties apart from the authority and the contest was between the authority proposing to be the act and the subject opposing it, the final determination of the authority would yet be a quasi-judicial act provided the authority is required by the statute to act judicially. The statute is, however, 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. In our opinion, the principle of this decision of the Supreme Court applies to the present case where the material facts are of similar character, in the present case we are of opinion that the Syndicate was exercising quasi-Judicial duties while acting under the provisions of paragraph 21 of ordinance IV of the statute. It follows that the Syndicate must follow the principle of natural Justice while acting in this capacity and adequate opportunity must be given by the Syndicate to the examinees for presenting their case. We have no doubt that the members of the Unfair Means Scrutiny Committee acted with the best of intention and they had the utmost desire to do what was right, but we think they made a mistake, in the circumstances of this case, in refusing to give the petitioners the materials upon which the allegation was based and also in refusing the petitioners an effective opportunity of defending themselves against the allegation of using unfair means in the examination hall. The principle of law applicable to a case of this description is also laid down by this Bench in *Jajati Bhattacharjee v. Vice Chancellor, Patna University*², in which we pointed out that the examination Board of the Patna University had acted arbitrarily in that case in making the inquiry of misconduct in the petitioner's absence and also in preventing the petitioner from giving evidence on his behalf and in not giving him an opportunity to prove his innocence. We have already referred to the subsequent decision of the Supreme Court in AIR 1962 SC 1110 where a similar view has been expressed.

5. For the reasons we have already given, we hold that the resolution of the Syndicate of the Ranchi university, Annexures-I and 1(i) to the counter-affidavit, and also the letter of the Registrar of the Ranchi university, dated the 26th September, 1963, Annexure-J to the counter-affidavit, are illegal and ultra vires and must be quashed by a writ in the nature of certiorari under Article 228 or the Constitution. We also hold that a writ in the nature of mandamus should be issued under Article 226 of the Constitution commanding the Syndicate of the Ranchi university

to re-investigate into the matter and using it is termination in accordance with law.

6. We accordingly allow this application. There will be no order as to costs.

7. We were informed in the course of hearing that the petitioners intend to appear at the Annual Examination, B.Sc. Part II Final, in the month of March, 1964. We desire to make it clear that it would be open to the petitioners to appear at this examination irrespective of the result of the inquiry on remand ordered by us in this case.

Applications allowed.

Cases Referred.

¹ AIR 1962 SC 1110

² Misc. Judl. Case No. 777 of 1959, D/-10-5-1960 (Pat)