

Supreme Court of India

Guru Nanak Dev University And ... vs Harjinder Singh And Another on 14 July, 1994

Equivalent citations: 1994 AIR 2591, 1994 SCC (5) 208

Author: K Singh

Bench: Kuldeep Singh (J)

PETITIONER:

GURU NANAK DEV UNIVERSITY AND ANOTHER

Vs.

RESPONDENT:

HARJINDER SINGH AND ANOTHER

DATE OF JUDGMENT 14/07/1994

BENCH:

KULDIP SINGH (J)

BENCH:

KULDIP SINGH (J)

SAHAI, R.M. (J)

FAIZAN UDDIN (J)

CITATION:

1994 AIR 2591

1994 SCC (5) 208

JT 1994 (4) 405

1994 SCALE (3) 288

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. The contentions raised in these writ petitions are covered by the pronouncement of this Court in Writ Petition No. 123 of 1987 (Pankaj Jain Agencies v. Union of India 12).

2. For the reasons set out in and following the said pronouncement, these writ petitions are dismissed with costs.

GURUNANAK DEV UNIVERSITY v. HARJINDER SINGH (Kuldeep Singh, J) The Judgment of the Court was delivered by KULDIP SINGH, J.- Special leave granted.

2. Harjinder Singh and Amandeep 'Singh, respondents in the appeal herein, were found guilty of

using unfair means in B.A. 11 Examination held in May 1991 by the Guru Nanak Dev University and were debarred from appearing in any university examination for a period of two years. The respondents challenged the action of the university by way of a writ petition under Articles 226/227 of the Constitution of India before Punjab and Haryana High Court at Chandigarh. The High Court by its judgment dated 21-5-1992 allowed the writ petition and quashed the orders of the University. This appeal by the Guru Nanak Dev University, is against the judgment of the High Court.

3. The respondents appeared in B.A. Part II English (C) Examination on 26-5-1991 at Ramgarhia College, Phagwara Centre, in the State of Punjab. The flying squad visited the centre while the examination was going on. What the flying squad noticed in the examination centre can at best be described by quoting the report of the in-charge flying squad which was sent to the University. The relevant part is as under:

"It is submitted that as a member of the flying squad, visited Ramgarhia College, Phagwara on 26-5-1991. I was assigned Centre Nos. 4 and 6 of this College. Before entering the Centre No. 4, when I entered this College premises, there was crowd of unwanted, hooligan students. I asked the sepoy of Home Guard on duty to disperse this mob. After this, some of the students did run away, but the others continued interfering with the smooth conduct of examination in both the centers from outside. The situation of Centre No. 4 was very deplorable. Many students possessed incriminating material and when the members of the flying squad entered the examination hall, they started throwing away the incriminating material in between the lines of desks. With this action, there was a complete chaos, but situation was controlled with great difficulty. After this the incriminating papers were recovered from two students bearing Roll Nos. 51419 and 65810. Their cases were written on UMC form Nos. B- 2038 and B-2037 respectively.

After this, when we entered Centre No. 6, meant for private candidates we found the situation of this centre worse. There was no control at all in this centre. There was total chaos."

4. Apart from the report of the flying squad the university received a specific complaint accompanied by carbon copies, printed material and photostat copies of the hand-written slips with the allegations that the candidates appearing in B.A. Part II English (C) on 26-5-1991 at Ramgarhia College, Phagwara Centre made use of the said material while giving answers to the question paper. Keeping in view the scenario depicted by the flying squad the University decided to enquire into the complaint received by it. The answer books pertaining to the above centre were sent to the subject expert for his scrutiny and report. The subject expert confirmed the allegations contained in the complaint and found that the respondents had copied from the incriminating material. The respondents were charged for using unfair means in the examination and were given opportunity to meet the charges. The respondents were served with show-cause notices and were asked to appear before the Standing Committee of the University to defend the charges under Ordinance 10(h) and (j) read with Ordinances 11 and 13 of the Guru Nanak Dev University Calendar Volume 11 (1991). Not satisfied with the replies submitted by the respondents, the Standing Committee of the

University found the respondents guilty in its proceedings dated 20-12-1991. The relevant part of the proceedings in Amandeep's case is reproduced as under:

"The specific allegations against the aforementioned candidate are that he copied answer to Q. Nos. III and VII from the incriminating material.

The candidate was issued show-cause notice for the commission of offences under Ordinance 10(h) and (j) read with Ordinance 11 and Ordinance 13 published in the GNDU Calendar Volume 11, Part B, 1991 and in pursuance thereof he appeared before the Committee today. The allegations levelled against him were narrated to him in detail enabling him to give his explanation, if any. The candidate denied the charges as incorrect and also denied having copied from the incriminating material circulated in the Centre. We have examined the case from all aspects. The subject expert in his report has clearly stated that the candidate has copied answer to Q. Nos. III and VII. We have also ourselves compared the answer book of the candidate with the corresponding answer in the incriminating material and found the answer to Q. Nos. III and VII verbatim in the answer book and the incriminating material. Hence both the charges levelled against the candidate are proved beyond doubt.

We, therefore, hold the candidate guilty of the commission of offence under Ordinance 10(j) read with Ordinance 11 and Ordinance 13 mentioned above and disqualify him for two years under each count from appearing in any examination of the University. Both the punishments shall run concurrently."

The proceedings of the Standing Committee in the case of Harjinder Singh are almost in similar terms.

5. The High Court quashed the proceedings of the Standing Committee of the University on the following reasoning:

"A bare perusal of sub-clause (i) to (h) shows that this was to apply if some material was found in possession of the candidate. Clause

(j) is to apply if the candidate had received any help from inside or outside the examination hall. Ordinance 13 which has been reproduced in the written statement provides that if the candidate had received or attempted to receive help from any source and in any manner, he could be disqualified from appearing in any examination for a period of not less than two years. The allegation of the petitioners that no incriminating material was recovered from their possession was not specifically denied in the written statement by the University. Thus, Ordinance 10 clause

(h) will not be attracted to the case in hand. In similar circumstances, we held so in Sanjeev Sharma's case. As far as sub-clause

(j) Ordinance 10 is concerned, there was no material before the Unfair Means Committee that the candidates received any help from any source. Merely because the answers to some questions in the answer sheet tallied with some material, may be from a book, will not show that the candidates had received any help from inside or outside the examination hall. There has to be some material to give a finding on question covered by clause (j) and it is only thereafter that Ordinance 13 would come into play. In such circumstances it would be a case based on no material."

6. It would be useful at this stage to have a look at the relevant University Ordinances which are reproduced hereunder:

"ORDINANCE 10 The use of unfair means in or in relation to the nomination shall include the following acts or omissions on the part of the candidate viz.

(a)to (h) * * *

(j)receiving help or attempting to receive help for answering the question paper from any source in any manner, inside or outside the examination hall.

(k) *

*

*

ORDINANCE 13

If the answer book of a candidate shows or it is otherwise established, that he had received or attempted to receive help from any source and in any manner, or has given help or attempted to give help to another candidate in any manner, he shall be disqualified from appearing in any examination for a period of not less than two years."

The expression "unfair means" has been defined in Ordinance 10 of the University Ordinances. The definition is on the face of it inclusive and not exhaustive. The menace of copying has already reached an alarming stage and in fact is a disgrace to our education system. There is no end to the ingenuity in discovering new techniques and methods of copying in the examination halls. It is not, therefore, possible to give an exhaustive definition of "unfair means". The framers of the ordinances have rightly given an inclusive definition to the said expression in Ordinance 10. We are of the view that Ordinance 10 covers use of unfair means in or in relation to the examination by any act or omission on the part of the candidate. It may be covered by any of the instances given in clauses (a) to (k) of Ordinance 10 or even otherwise. So long as the University has communicated the charge to the candidate in clear terms and has given him opportunity to defend, the candidate cannot be heard to say that he is not guilty simply because he is not covered by any of the clauses in Section 10 of the Ordinance.

7. The flying squad found that many students possessed incriminating material and on seeing the members of the flying squad they started throwing away the same in between the lines of the desks. The situation was deplorable and there was total 'chaos in the examination hall. In the background of the situation in the examination hall as depicted by the flying squad the University was justified in

inquiring into the complaint received by it. The subject expert on examination of the answer books and comparing the same with the incriminating material came to the conclusion that the respondents had copied from the incriminating material. The Standing Committee, on comparison found that the answers to Question Nos. 3 and 7 were verbatim copied from the incriminating material. It was, therefore, proved to the satisfaction of the Standing Committee that the respondents received help in answering the question paper from the incriminating material. The charge is covered by Ordinances 10(j) and 13 of the University Ordinances. We are of the view that in the facts and circumstances of this case specially as reported by the flying squad the non-recovery of the incriminating material from the possession of the candidates is of no consequence. It cannot be a mere coincidence that answers given by the respondents tally verbatim with the answers contained in the incriminating material. It was not the case of the respondents before the Standing Committee that they had crammed the answers from any book or any other source. We are, therefore, of the view that the High Court fell into patent error in quashing the proceedings of the Standing Committee and the consequent orders of the University.

8. We allow the appeal, set aside the impugned judgment of the High Court dated 21-5-1992 and dismiss the writ petition filed by the respondents before the High Court. No costs.