

GURU NANAK DEV UNIVERSITY AND ANR.

HARJINDER SINGH AND ANR.

JULY 14, 1994

[KULDIP SINGH, R.M. SAHAI AND FAIZAN UDDIN, JJ.]

Guru Nanak Dev University Calendar 1991 : Volume-II—Part- B—Ordinances 10(h) and (j), 11 and 13.

Examination—Use of unfair means by examinee—Subject expert confirming copying from incriminating material—Standing Committee also found the answers verbatim from incriminating material—Charge of using unfair means held proved—Definition under Ordinance 10 held inclusive and not exhaustive—Covers use of unfair means by any Act or omission—Non-recovery of incriminating material from possession of candidate held of no consequence.

The respondents appeared in B.A. Part-II English (C) Examination at Ramgarhia College, Phagwara Centre, Punjab. On the examination day, the flying squad visited the centre and found that there was total chaos in the examination hall and 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. Accordingly, the In-charge of the flying squad reported the matter to the University. Apart from the report of the flying squad the university also received a specific complaint accompanied by carbon copies, printed material and photo-stat copies of the hand written slips with the allegations that the candidates made use of the material while giving answers to the question papers. Therefore, the university decided to enquire into the matter and accordingly sent the answer books to the subject expert for his scrutiny who confirmed the allegations contained in the complaint and found that the respondents had copied from the incriminating material. Accordingly, the respondents were charged for using unfair means in the examination under Ordinance 10(h) and (j) read with Ordinance 11 and 13 of the Guru Nanak Dev University Calendar Volume II (1991). The respondents were given opportunity to meet the charges before the Standing Committee of the University but the Committee was not satisfied with the replies sub-

A mitted by the respondents. Besides the Standing Committee also found that the answers written by the respondents were verbatim from the incriminating material. Consequently the Standing Committee held the respondents guilty of using unfair means in the examination and disqualified them for two years from appearing in any examination of the University. The respondents filed a petition before Punjab and Haryana High Court which quashed the order stating that the decision of the University was based on no material and the provisions of Ordinance were not applicable to the case in question because (i) there was no material before the Committee that the respondents received any help from any source and merely because the answers to some questions in the answer sheet tallied with some material will not prove that candidate had received help from inside or outside; (ii) no incriminating material was received from the respondents. Against the decision of High Court, University preferred the present appeal.

D Allowing the appeal and setting aside the judgment of the High Court, this Court

HELD : 1. The High Court fell into patent error in quashing the proceedings of the standing committee and the consequent orders of the University. [678-A]

E 2. The charge against the respondents is covered by Ordinance 10(j) and 13 of the University Ordinances. The definition of 'Unfair means' in Ordinance 10 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'. 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. [677-B-D]

H 3. It cannot be a mere coincidence that answers given by the respondents tally verbatim with 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. Therefore, 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. [677-G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4767 of 1994.

From the Judgment and Order dated 21.5.92 of the Punjab & Haryana High Court in C.W.P. No. 2450 of 1992.

Sardar Ajit Singh and S.K. Gambhir for the Appellants.

Dr. Surat Singh and Pramod Sharma for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. Special leave granted.

Harjinder Singh and Amendeep Singh, respondents in the appeal herein, were found guilty of using unfair means in B.A. (II) 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 Article 226/227 of the Constitution of India before Punjab and Haryana High Court at Chandigarh. The High Court by its judgment dated May 21, 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.

The respondents appeared in B.A. Part-II English (C) Examination on May 26, 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 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 I as a member of the Flying Squad, visited Ramgarhia College, Phagwara on 26.5.1991. I was assigned Centres No. 4 & 6 of this College. Before entering the Centre No. 4, when

- A 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 Centres from outside. The situation of
- B 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
- C recovered from two students bearing Roll Nos. 51419 and 65810. Their cases were written on UMC forms No. B-2038 and B-2037 respectively.

- D 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."

- E Apart from the report of the flying squad the university received a specific complaint accompanied by carbon copies, printed material and photo-stat copies of the hand written slips with the allegations that the candidates appearing in B.A. Part-II English (C) on May 26, 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
- F 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) & (j) read with Ordinances 11 & 13 the Guru Nanak Dev University Calendar Volume II (1991). Not satisfied with the replies submitted by the respondents, the standing committee of the university found the respondents guilty in its proceedings dated december 20, 1991. The relevant part of the
- H proceedings in *Amandeep's* case is reproduced as under :—

"The specific allegations against the aforementioned candidate are that he copied answer to Q. No.III & VII from the incriminating material. A

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 Vol. II, 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. B C

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.No. III & VII. We have also ourselves compared the answerbook of the candidate with the corresponding answer in the incriminating material and found the answer to Q.No. III & VII verbatim in the answerbook and incriminating material. Hence both the charges levelled against the candidate are proved beyond doubt. D

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." E

The proceedings of the standing committee in the case of *Harjinder Singh* are almost in similar terms. F

The High Court quashed the proceedings of the standing committee of the university on the following reasoning : G

"A bare perusal of sub-clauses (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 with has been reproduced in the written statement provides that if the candidate H

- A 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."
- B
- C
- D

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

"Ordinance 10.

- E 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).....

- F (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) x x x x x x x x

- G *Ordinance 13.*

- H 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 dis-

qualified 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 at 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.

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 numbers 3 & 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

A 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.

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

T.N.A.

Appeal allowed.