such a consequence can only be avoided if care is initially taken in the making of such appointments.

The petition fails and is dismissed, but in the circumstances of the case, there is no order in regard to costs.

K.S.K.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and Prem Chand Pandit, JJ.

BHARAT INDU,—*Petitioner*

versus

THE PUNJAB UNIVERSITY AND ANOTHER,—*Respondents*

Civil Writ No. 379 of 966

October 27, 1966

Punjab University Act (VII of 1947)—S. 31—Punjab University Calendar, Volume 1—Regulation 19—Proceedings before Standing Committee—Whether quasi-judicial—Rules of natural justice—Applicability of—Nature and extent stated—Such proceedings—Whether analogous to proceedings in Court—Show-cause notice to the candidate—Whether must be given by Standing Committee— Appointment of Assistant Registrar to collect evidence—Whether without jurisdiction nullifying subsequent proceedings— Standing Committee—Whether should examine witnesses in case of conflict.

Held, that it is no doubt true that the University authorities, when dealing with cases of misconduct and use of unfair means in connection with an examination, perform quasi-judicial functions. But Regulation 19 of the Punjab University Calendar, Volume I, does not suggest that show-cause notice to the candidate concerned must also necessarily be given by the Standing Committee appointed by the Syndicate of the University in which the Executive Government of the University vests. The expressions "rule of natural justice" and "quasi-judicial" are both lacking in precision. The rules of natural justice, however, are not exactly those of Courts of justice. They are rather those desiderata which are regarded as essential in contradistinction from the many extra-precautions helpful to justice, but not indispensable to it, which, by those rules of evidence and procedure, the Courts have made obligatory in actual trials before themselves. The broad fundamental principal of natural justice is that a man has a right to be heard. This is only fair play in action, its essential requisites being at least to include that before some one is condemned, he has to

have an opportunity of defending himself and in order that he may do so, is to be made aware of the charges or allegations or suggestions which he has to meet. Whether or not this rule has been complied with, would obviously depend on a variety of circumstances. In each case the Court has to satisfy its conscience that the person against whom adverse action is proposed has been afforded a fair chance of convincing the authority proposing to take action, that the grounds on which the action is proposed, the material on which the allegations are based either do not exist or they do not justify the action proposed. A decision of this type must, from its very nature, depend on all the peculiar facts and circumstances of a case, including the nature of action proposed, the grounds thereof, the attitude of the party proceeded against in showing cause, the nature of his plea in answer, his admission by conduct or otherwise of some or all the allegations, his request for further opportunity, his age and antecedents and all other matters which cannot be exhaustively enumerated or visualised, which assist the mind in coming to a fair conclusion on the question. It is accordingly inadvisable and inexpedient—if not misleading—to look for complete analogy from cases under other statutes designed in different settings to achieve different purpose through a different process.

Held, that if the show-cause notice to a candidate does not emanate from the Standing Committee constituted under the Regulation, it does not stand vitiated, nullifying all subsequent proceedings.

Held, that the appointment of the Assistant Registrar by the Standing Committee to collect the evidence is not delegation of the essential basic quasi-judicial duty of the Committee, and is not violative of the recognised rules of natural justice, nullifying the final decision of the Committee. Merely getting the evidence collected by the Assistant Registrar by itself cannot *per se* be held to be without jurisdiction or so fundamentally infirm as to nullify or render void the subsequent proceedings.

Held, that on the peculiar facts and circumstances of this case, and particularly on the categorical statement of the Centre Superintendent it was incumbent on the Standing Committee or at least some members thereof to examine both the Expert and the Centre Superintendent and form their own independent judicial opinion on a consideration of the entire case. To leave it to the University Expert, about whose qualification nothing has been disclosed on the record, was a clear abdication of the solemn responsibility of the Standing Committee which is clearly violative of the rules of natural justice.

Responsibility of the University authorities in matters of education is stressed.

Case referred by the Hon'ble Mr. Justice Mehar Singh, Acting Chief Justice on 20th May, 1966 to a larger Bench owing to an important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice Prem Chand Pandit, on 27th October, 1966.

Petition under Article 226 of the Constitution of India praying, that a Writ in the nature of Certiorari, mandamus *or any other appropriate Writ, order or direction be issued quashing the orders of Punjab University.*

B. R. TULI SENIOR ADVOCATE WITH S. K. TULI, ADVOCATES, for the Petitioner.

G. P. JAIN, B. S. GUPTA AND G. C. GARG, ADVOCATES, for the Respondents.

ORDER PASSED BY DIVISION BENCH

DUA, J.—These two writ petitions (*Devinder Kumar Gupta* v. *The Punjab University*, C.W. 1466 of 1965 and *Bharat Indu* v. *The Punjab University*, C.W. 379 of 1966) have been heard together. *Devinder Kumar Gupta's* writ petition was referred to a larger Bench by my learned brother Pandit, J., on 8th February, 1966, because of the importance of the question regarding the manner in which the Standing Committee constituted under Regulation 19 of the Punjab University Calendar, 1962, Volume I, has to act while deciding cases against the examinees involving unfair means adopted by them in the examination halls. It was argued before Pandit, J., that being a quasi-judicial body, the Standing Committee had to act judicially and after giving the necessary opportunity to the examinee concerned, all the members of the Standing Committee must sit together, discuss the whole case and then pass final order. *Bharat Indu's case* was ordered on 20th May, 1966 by Mehar Singh, Acting C.J. (as he then was) to be heard by a Division Bench along with *Devinder Kumar Gupta's case* in the first week on the opening of the Court after vacation in July, 1966. The question raised in these two cases is of some importance which, as is apparent from the referring order of my learned brother Pandit, J., does not seem to have so far been determined or even seriously adverted to in any of the decided cases brought to our notice. Main arguments were addressed before us by Shri B. R. Tuli in *Bharat Indu's case* and Ch. Roop Chand, learned counsel for devinder Kumar Gupta, supplemented Shri Tuli's contentions by developing some other aspects considered relevant to the decision of the main controversy, Relevant facts can now be stated.

In *Bharat Indu's case* (C.W. 379 of 1966), according to the writ petition, the petitioner was a student of the Arya Higher Secondary School, Dina Nagar, district Gurdaspur and appeared as a candidate at the Higher Secondary (Elective Groups) Examination held by the Punjab University in February, 1965, his roll number being 100705 and centre of examination, Government Higher Secondary School, Dina Nagar. When the results were declared, against the petitioner's

roll number. "Result Later On" was mentioned. The petitioner, however, joined the Government College, Gurdaspur, provisionally attending B.A. Part I Class, till 30th November, 1965, when he was informed that he had been disqualified by the Punjab University for two years by means of notification No. H.S.-65/54, dated 29th November, 1965. The petitioner had been summoned by the Assistant Registrar, Punjab University, to appear before him on 28th September, 1965, in connection with an enquiry to be held in the matter of unfair means alleged to have been used by the petitioner in answering question No. 2 of English Paper 'B'. This was the first communication received by him from the Punjab University. In compliance with this notice, the petitioner appeared before the Assistant Registrar on 28th September, 1965, when he was given a questionnaire and was asked to reply to the questions entered therein. It was alleged that the petitioner had copied from Shri Subash Chander, roll No. 100704, but the petitioner denied this allegation. The answer to the aforesaid question No. 2 given by Shri Subash Chander was neither shown nor read out to the petitioner, with the result that the petitioner did not know what was the similarity which suggested that his answer was a copy of the one given by Shri Subash Chander. It was stated that the report of the Head Examiner was against the petitioner but even that report was neither shown nor read out to the petitioner. The petitioner was not even given an opportunity to cross-examine him on his report. The anonymous complaint on which action was being taken was also not shown or read out to him. After obtaining replies from the petitioner to the questionnaire the Assistant Registrar asked him to come in the afternoon which the petitioner did. On that occasion the Assistant Registrar gave a supplementary questionnaire to the petitioner in which it was stated that the questionnaire given to the petitioner earlier on that day along with his replies had been sent to the University Expert who implicated him of the charge of using unfair means while answering question No. 2 in English Paper B. The opinion of the Expert was stated in question No. 1 of the supplementary questionnaire to which the petitioner replied denying the reasons and the inference of the Expert. The Expert, it is emphasised, was not examined in the presence of the petitioner nor was the petitioner given an opportunity to cross-examine him for the purpose of showing that this conclusion and opinion were both wrong. Thereafter the matter was sent to the Committee which never afforded any opportunity of hearing to the petitioner. It is pleaded in the

writ petition that these facts disclose clear violation of the principles of natural justice. The petitioner, it is submitted, appealed to the Vice-Chancellor of the University on 7th December, 1965, but the Vice-Chancellor also did not afford him any opportunity of hearing and rejected his appeal intimating the petitioner of the result by letter, dated 8th February, 1966. The petitioner applied to the Assistant Registrar, Unfair Means Branch, Punjab University, for supplying certified copies of seven documents enumerated in paragraph 7 of the writ petition but neither were copies supplied to him nor any reply sent. These seven documents are:—

(1) Questionnaire given to the petitioner and his replies;

(ii) Reports of the Head Examiner, Specialists and other material taken into consideration while making the impugned order;

(iii) Anonymous complaint on the basis of which the enquiry was held and action taken;

(iv) Findings of the Unfair Means Committee.

(v) Reports of the Assistant Registrar, Unfair Means Branch, in this matter.

(vi) Reports of the Superintendent, Supervisors and Inspector of Centre in this matter; and

(vii) Answer to question No. 2 of English Paper "B", Higher Secondary (Elective Groups) Examination February, 1965 by the petitioner and by Shri Subash Chander, Roll No. 100704.

This application is not denied in the return, but it is pleaded therein that the petitioner was allowed to inspect the file and copy out the relevant document which formed the basis of the decision of the Standing Committee. It is further averred in the writ petition and not denied in the return that in the examination centre in question there were more than 200 examinees. The Superintendent and the Supervisors, according to the writ petition, were not known to the petitioner, not being from his school. This Ghasita Ram Sharma, Headmaster, Government Higher Secondary School, Banguri, district Gurdaspur, acted as Superintendent as averred by the petitioner has also not been denied on behalf of the respondents. The writ petition continues to state that the petitioner had done quite satisfactorily in all the subjects in the examination and was not suspected of using unfair means during the course of the examination. That he was

not suspected is admitted in the return, though it is added that this may have been due to laxity in supervision. Subash Chander, Roll No. 100704, was also summoned by the Assistant Registrar for enquiry but his result is stated to have been declared and he has passed in the examination which, according to the writ petition, means, that he was not found guilty of having allowed the petitioner to copy from his answer-book. It has been explained in the writ petition that keeping in view the seating arrangement and the location of the petitioner's seat and that of Subash Chander in the examination hall, it was impossible for the petitioner to copy from Subash Chander's answer-book without the latter's connivance. It is further averred that looking at the order in which the questions have been answered by the petitioner and by Subash Chander in their respective answer-books, it is clear that the petitioner had answered question No. 2 in point of time before Subash Chander answered this question. These in brief are the material averments contained in the writ petition.

In the return it is admitted that the University had received an anonymous complaint alleging that the petitioner and four other candidates had made use of unfair means on the day of English Papers "A" and "B", with the help of a Supervisor named Shiv Dayal. On receipt of this complaint, the Head Examiner and the Sub-Examiner in the English Papers "A" and "B" were requested to specially scrutinise these answer-books. Both the examiners exonerated the suspected candidates in respect of English Paper "A". The Sub-Examiner in English Paper "B" also exonerated these candidates but the Head Examiner in this paper reported that the candidate bearing Roll No. 100705 (the petitioner) and another candidates bearing Roll No. 100704 were guilty of using unfair means during the said examination. On account of difference of opinion between these two examiners, the matter was referred to Prof. Ish Kumar of the Department of English, Punjab University, for his expert opinion. Prof. Ish Kumar after examining the papers of both the aforesaid candidates reported that Roll No. 100705 had copied from Roll No. 100704. Thereafter the University Authorities sent for these two candidates and the petitioner appeared before the Assistant Registrar on 28th September, 1965. Both the answer-books were shown to the petitioner along with the reports of the Head Examiner in English Paper "B" and of Prof. Ish Kumar, University Expert. "The petitioner was given a questionnaire containing several questions which were explained to him in his own language. The petitioner was free to seek any clarification of any question which he failed to understand. The petitioner was fully satisfied with the

mode of enquiry and he answered the various questions, as contained in the said questionnaire according to his free will in his own language. The petitioner did not object to the mode of enquiry at that time or subsequent thereto". I have here reproducd the exact words of the return. In the light of the observations of Prof. Ish Kumar, as contained in Annexure R. 2, according to the return, the matter was again referred to him for his final report which is contained in Annexure R. 5. The same day, i.e., 28th September, 1965, the petitioner was again interrogated in the light of Prof. Ish Kumar's final report. It is admitted in the return that the answers given by Subash Chander, Roll No. 100704, were not shown to the petitioner as it was considered unnecessary. It is further averred that the petitioner did not ask for an opportunity to cross-examine the Head Examiner or any other person. After collecting the aforesaid material, the record was forwarded to the Standing Committee appointed under Regulation 21 at p. 108 of the Punjab University Calendar, 1964-65, Volume I, The Standing Committee, it is pleaded in the return, thoroughly examined the case and unanimously came to the conclusion that the petitioner was guilty of using unfair means during the examination in English Paper "B" and disqualified him for two years, i.e., 1965 and 1966 under Regulation 13(b) given at page 104 of the said calendar. The Standing Committee is stated to consist of highly eduated, independent and honest gentlemen possessing judicial and administrative experience and the members thereof, so proceeds the return, arrived at the unanimous conclusion by adopting honest means. The petitioner's representatition to the Vice-Chancellor is admitted and it is added that though it was not competent against the unanimous conclusion, nevertheless, the same was considered and rejected. The candidate with Roll No. 100704, according to the return, was given the benefit of doubt. It is controverted that the Standing Committee was bound to provide oral hearing to the petitioner and it is added that the petitioner never asked for such a hearing. The petitioner, so proceeds the return, could copy from Roll No. 100704 without the latter's knowledge or connivance. In the return, it is further admitted that neither the Superintendent nor any member of the supervisory staff at the examination centre in question reported any use of unfair means but this, it is repeated, may be due to laxity of supervision. ,

Shri Tuli has in his usual forceful manner submitted that the Standing Committee in question had to perform a quasi-judicial function and, therefore, it was for this body itself to initiate the proceedings, to hold an enquiry and to come to its own final conclusion after a proper discussion by its members with one another

assembled together. Specific information of the charge should, according to the argument, have been given to the petitioner and evidence examined in his presence, giving him a right to cross-examine the witnesses. This should have been followed by an opportunity to adduce defence and finally to allow him to address oral arguments before the Standing Committee. The entire process, so argues Shri Tuli, should have been gone through in the presence of all the members of the Standing Committee assembled together so that they should be able to form an opinion about the demeanour of witnesses and also of the petitioner for the purpose of coming to a satisfactory decision on the point in controversy. Shri Tuli's argument in short is that the Standing Committee should proceed in much the same way as a Court does or at least as an arbitrator does. Failure to so proceed is, according to the counsel, a violation of the rules of natural justice. In support of his submission, he has first referred us to the statutory provision and has then sought support from a number of decided cases.

Our attention has been drawn to Regulation 19 mentioned above made under section 31 of the Punjab University Act, 1947. According to this Regulation, the Syndicate is enjoined to appoint annually Standing Committee to deal with cases of the alleged misconduct and use of unfair means in connection with examinations. When the Committee is unanimous, its decision is rendered final except where, in the opinion of the Vice-Chancellor, facts have been brought to light within 30 days of the receipt of the decision by the candidate which, had they been before the Committee, might have induced them to come to a different decision, in which event, the Vice-Chancellor is empowered to order such facts to be reduced to writing and placed before the Committee. The Committee is then required to re-consider the case and a unanimous decision arrived at is to be final. If the decision of the Committee is not unanimous, the matter is required to be referred to the Vice-Chancellor who is empowered either to decide the matter himself or refer the same to the Syndicate for decision. Shri Tuli has emphasised that this provision, considered in the background of the nature of the controversy to be settled by the Standing-Committee, leaves no doubt that the function to be performed by the Standing Committee is quasi-judicial. Stress is also laid by Shri Tuli on the submission that the Syndicate of the University having delegated to the Standing Committee its function of taking action against the candidates charged with using unfair means during examinations the Standing Committee in the absence of a provision, express or implied, cannot further delegate its function

which is of quasi-judicial character. According to the counsel, the instance of an arbitrator furnishes a close analogy. As a quasi-judicial body, the Standing Committee may legitimately be equated with the Courts, says the counsel, though it is frankly conceded that he is unable to lay his hands on any decided case directly supporting this submission. He has cited *Nand Ram* v. *Fakir Chand* (1), in which a case had been referred by the Court to the arbitration of three persons, the parties to the reference agreeing to be bound as to the matters in dispute by the decision of a majority of the arbitrators and one of the arbitrators subsequently refusing to act withdrew from the arbitration. It was laid down that the Court could not pass a decree on the award of the remaining arbitrators and could only appoint a new arbitrator or supersede the arbitration and proceed with the suit. To Oldfield, J., the matter seemed to be very clear and he did not give any elaborate reasoning in support thereof. Mahmood, J., however, after agreeing with Oldfield, J., elaborated the point and observed that the presence of all the arbitrators at all meetings, and above all at the last meeting, when the final act of arbitration was done, was essential to the validity of the award. Disagreeing with the view expressed by the Calcutta High Court, he approved the principle laid down by the Allahabad High Court in *Rohilkhand and Kumaon Bank* v. *Row* (2) in which it had been ruled that no judgment can be given in a Court consisting of several Judges unless those Judges have conferred together, heard evidence and arguments together and formed their opinions upon the entire arguments and evidence so heard. This principle, according to the learned Judge, was applicable to the case of arbitrators as well. The other decisions cited in support of this submission are *Thammiraju* v. *Bapiraju* (3), *Dharmu* v. *Krushna* (4) [head-note(a)] and *Fazalally* v. *Khimji* (5) [head-note(d)]. Shri Roop Chand Chaudhri appearing for Devinder Kumar Gupta (C.W. 1466 of 1965) have gone to the length of submitting that in the absence of appropriate rules regulating the procedure to be adopted by the Standing Committee, its orders must be struck down as without jurisdiction and *ultra vires*. According to him, the term "Court" having not been defined, the Standing Committee can, in view of its functions, be appropriately considered to be a Court, with

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(1) I.L.R. 7 All. 523.
(2) I.L.R. 6 All. 468.
(3) I.L.R. 12 Mad. 113.
(4) A.I.R. 1956 Orissa 24.
(5) A.I.R. 1934 Bom. 476.

the result that its proceedings must be conducted in accordance with the same rules which govern the Courts. Parallel has also been sought by the counsel from section 289 of the Indian Companies Act of 1956 and from the cases of co-agents for which reference has been made to Article 9 of Bowstead On Agency, 12th Edition. I am unable to find any support for the petitioner's arguments from section 289, Indian Companies Act, nor is it possible to deduce any settled rule of law from Article 9 of Bowstead On Agency to sustain the submission.

In support of the claim of personal hearing, greatest reliance has been placed by Shri Tuli on *G. Nageswara Rao* v. *A. P. State Road Transport Corporation* (6). The counsel read out to us practically the whole of the judgment placing special reliance on paragraphs 27 to 31. The following portion of paragraph 31 was specially commended to us by the learned counsel for applying to the case in hand:—

> "The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty or the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality".

The quotation appears to me to suggest that the Act and the Rules with which the Court was concerned imposed a duty on the Government to give a personal hearing. The other decisions on which reliance has been placed on behalf of the petitioner on the question as to when a Tribunal is said to discharge a quasi-judicial function and what is the nature of the hearing which the party to be affected is entitled to may now be noticed. *M/s. Fedco (P) Ltd.* v. *S. N. Bilgrami*, (7) was concerned with Imports (Control) Order (1955) and

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(6) A.I.R. 1959 S.C. 308.
(7) A.I.R. 1960 S.C. 415.

it was observed that the requirement that a reasonable opportunity of being heard must be given has two elements. The first is that an opportunity to be heard must be given : the second is that this opportunity must be reasonable. Both these matters are justiciable. There can be no invariable standard for reasonableness in such matters, except that the Court's conscience must be satisfied that the person against whom an action is proposed has had a fair chance of convincing the authority who proposes to take action against him that the grounds on which the action is proposed are either non-existent or even if they exist, they do not justify the proposed action. The decision of this question will necessarily depend upon the peculiar facts and circumstances of each case, including the nature of the action proposed, the material on which the allegations are based, the attitude of the party against whom the action is proposed in showing cause against such proposed action, the nature of the plea raised by him in reply, the requests for further opportunity that may be made, his admissions by conduct or otherwise of some or all the allegations and all other matters which help the mind in coming to a fair conclusion on the question. On the facts of the reported case the majority of the Judges held that the opportunity given to the licensee amounted to a reasonable opportunity notwithstanding the omission to give the particulars of the fraud or inspection of papers. In *Board of High School & Intermediate Education, U. P.* v. *Ghanshyam Das Gupta* (8), the Court was concerned with the U.P. Intermediate Education Act (2 of 1921) and the persons affected were examinees alleged to have used unfair means in the examination halls. It was observed that the Examination Committee of the Board of High School and Intermediate Education acts quasi-judicially while dealing with cases of examinees using unfair means in examination halls and the principles of natural justice which require that they must be heard will apply to the proceedings before the Committee. It was expressly laid down that though there was 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 that matter, particularly as it had to decide objectively certain facts which may seriously affect the rights and careers of examinees before it can take any action in the exercise

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(8) A.I.R. 1962 S.C. 1110.

of its power. *Shri Amir Singh* v. *Government of India* (9), is a judgment in Letters Patent Appeal dealing with section 182, Sea Customs Act, in which the use of the word "adjudged" in section 182 of the aforesaid Act was held to show that the matter required judicial approach and the procedure to be adopted should conform to judicial requirements. The Bench proceeded to notice the cardinal principle of our judicial system that a case should be decided by the authority hearing the arguments and not by his successor without hearing the arguments afresh. Reference in this connection was made in the judgment to the Supreme Court decision in *Nageswara Rao's case.* I may point out that in the said Supreme Court judgment, there is a suggestion that the relevant Act and the Rules impose a duty on the State Government to give a personal hearing. *Messrs Ramchand Jagdishchand* v. *The Deputy Collector of Customs* (10), a Single Bench decision of the Calcutta High Court, is also concerned with the Sea Customs Act. In this case, it has been observed that where a personal hearing is given in an adjudication, the person who hears cannot allow an enquiry to be held or evidence to be taken by another person and then pass the order on reading the record because in such a case the person to be heard is deprived of an opportunity of satisfying the person who passes the order. In this case also the Supreme Court decision in *Nageswara Rao's case* was followed and an unreported decision of the Bombay High Court was not followed. *Dharani Mohan* v. *State of Assam,* (11) deals with disciplinary proceedings against a police official who was punished in a departmental proceeding and it was held there that on appeal the aggrieved party was entitled to be heard in its support before the same could be rejected, this being the normal right of an appellant unless negatived by the statute. *University of Ceylon* v. *Fernando,* (12), is a decision of the Privy Council dealing with the General Act of the University of Ceylon. The discussion relevant for our purpose deals with the complaints made by the aggrieved student, plaintiff there, that the evidence including that of one Miss Balasingham had been taken in the plaintiff's absence who was not aware of the evidence led against him or of the case he had to meet and that the evidence of certain witnesses was taken by the Vice-Chancellor in the absence of the other members of the Commission. I may point out at this stage that the Vice-Chancellor of the University concerned had set up a

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(9) I.L.R. 1964 (2) Punj. 784.
(10) A.I.R. 1963 Cal. 331.
(11) A.I.R. 1963 Assam 183.
(12) 1960(1) All. E.R. 631.

Commission of Enquiry consisting of himself, Prof. Mylvaganam, Dean of the Faculty of Science, and Mr. Keuneman, Q. C., a member of the Council of the University, who was to lead the enquiry. This Commission of Enquiry was set up to assist the Vice-Chancellor in satisfying himself of the truth or falsity of the allegations. It was not disputed in that case that the plaintiff was not present, and was not invited to be present at the examination of any of the witnesses, or that the Vice-Chancellor did, in fact, interview two witnesses, namely, Prof. Fernando and Dr. Cruze, in the absence of the other members of the Commission. It was further admitted that the plaintiff had not at any stage questioned Miss Balasingham and was never offered an opportunity of doing so. It was also undisputed that the plaintiff had been interviewed and questioned at length about the matter by the three members of the Commission on two dates. The attention of the judicial Committee was drawn to various decisions dealing with the question of the rules of natural justice requiring hearing including the decisions in the *Board of Education* v. *Rice*, (13). *Local Government Board* v. *Arlidge* (14), and *Osgood* v. *Nelson* (15). After considering the various decisions brought to the notice of the board, it was observed that on the facts and circumstances of that case there was nothing disclosed to justify the conclusion that the requirements of natural justice had not been sufficiently observed. It is obvious that the Privy Council came to its conclusion on considering all the relevant facts and circumstances of that case.

Great emphasis has been laid by Shri Tuli in his usual forceful manner that the Assistant Registrar who was not even a member of the Standing Committee conducted the proceedings which are stated to constitute the enquiry in which the petitioner is said to have been afforded a hearing in compliance with the rules of natural justice. It is a report of this Assistant Registrar on the result of his enquiry which is the foundation of the impugned order. The counsel has strongly criticised this procedure as violative of the recognised rules of natural justice. He has sought support for his submission from the *The King* v. *Sussex Justices, Ex parte McCARTHY*, (16), In the reported case conviction was quashed on the ground that at the conclusion of the evidence the justices retired to consider their

(13) 1911 A.C. 179.
(14) 1915 A.C. 120.
(15) (1872) L.R. 5 H.L. 636.
(16) L.R. (1924) 1 K.B. 256.

decision, the acting clerk retiring with them in case they should desire to be advised on any point of law. The said clerk was a member of the firm of solicitors engaged in the conduct of proceedings for damages against the applicant there in respect of the same collision as that which had given rise to the charge which the justices were considering. In the course of the judgment, it was observed by Lord Hewart, C.J., that it was not merely of some importance that justice should not only be done but should manifestly and undoubtedly be seen to be done. "Nothing", so observed the learned Chief Justice, "is to be done which creates even a suspicion that there has been an improper interference with the course of justice". The analogy of the reported case does not appear to me to be close because obviously the University Authorities are not expected to act as a Court of law and justice. *R.* v. *Barry (Glamorgan) Justices, Ex parte Kashim*, (17), also proceeds on similar lines as the case of *Ex parte McCARTHY* except that in this case question of fact was to be considered by the justices. The next decision cited is *Brajlal Manilal and Co.* v. *Union of India* (18), in which the Union Government was held to act in a quasi-judicial manner when disposing of an application for review under Rule 59 of the Mineral Concession Rules, 1949 and it was laid down that where the Central Government passes an order without giving opportunity to the petitioner to meet the case against him, the order is vitiated as being contrary to the principles of natural justice. Reference has also been made to *Union of India* v. *T. R. Verma*, (19), for the submission that a party should have an opportunity of adducing all relevant evidence on which he relies and that the evidence of the opponent should be taken in his presence with the right of cross-examination. This case related to a service matter and this decision also suggests that from the fact that there is no cross-examination, it does not follow that the request of a party to cross-examine was disallowed.

Shri Roop Chand has drawn our attention to *Yespal* v. *Punjab University*, (20), in which Grover. J., has observed that Regulation 19 contemplates a decision by the Standing Committee alone and it is only in the event of there being any difference between the members of the Committee that a decision can be given by the Vice-Chancellor. From this it is sought to be concluded that the evidence

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(17) 1953 (2) All. E.R. 1005.
(18) A.I.R. 1964 S.C. 1643.
(19) A.I.R. 1957 S.C. 882.
(20) (1965) Curr. Law Journal (Pb.) 182.

should also be recorded by the Standing Committee and the Standing Committee itself must give a hearing to the student proceeded against. On behalf of the respondents, Shri G. P. Jain, has tried to explain the decision of the Supreme Court in the case of Ghansham Das Gupta and has placed positive reliance on a later decision of the Supreme Court in *The Board of High School & Intermediate Education, U.P.* v. *Bagleshwar Prashad and others,* (21). It was observed in that judgment as follows :—

> "In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the Universities or appellant No. 1, set up Enquiry Committees to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic Tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of the adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which educational institutions have to face from time to time is a serious problem and unless there is justification to do so, Courts should be slow to interfere with the decisions of domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities under Article 226, the High Court is not sitting in appeal over the decision in question; its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quash that order. But the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Enquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such enquiries, the Tribunal must scrupulously follow rules of natural justice; but it would, we think, not

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(21) (1963) 3 S.C.R. 767.

be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary Courts of law."

Shri Tuli, it may be pointed out, has also sought some support from this decision by contending that there the Enquiry Committee had itself investigated into the complaint and the Supreme Court had also itself examined the answer-books and looked at the incorrect answers for the purpose of concluding that the incorrect answers had not been given by the two candidates concerned either by accident or by coincidence. Shri G. P. Jain, has made a reference to a large number of decisions to which it is unnecessary to refer in detail because they merely point out that there are no exhaustive rules of natural justice and that in each case the decision has to be arrived at on its own facts and circumstances. Those cases deal with different statutes and naturally the reasoning and approach of the Courts would be somewhat different. The University cases to which reference has been made at the bar may, however, be noticed. In *Rajendra Kumar* v. *Vice-Chancellor,* (22), it has been observed that so far as disciplinary action of any sort, whether under the Service Rules or under the University or School Education Board Acts is concerned, there can be no doubt that a charge of adopting unfair means in the examinations would be more or less of a quasi-criminal nature involving the reputation and career of the student. Therefore, it is all the more necessary that before a person is condemned, he must be given an opportunity to be heard. As to what is a sufficient or a reasonable opportunity will depend on the particular facts of a case. It was further added that the basic principles ought not to be ignored, namely, that the authority taking disciplinary action has some material before it which can be the basis of arriving at a conclusion of the guilt of the person concerned and any reasonable man would arrive at such conclusion. In *Sardar Anmol Singh* v. *Registrar, Osmania University,* (23), it was observed that the requirements of natural justice are not fixed and immutable. They depend upon the character of the Tribunal, the nature of the enquiry and the effect of adjudication. The question whether or not any rules of natural justice have been contravened, would be decided in the light of statutory rules and provisions under which statutory body functions. It was further held there that there was no obligation on the part of the University to have witnesses examined in

(22) A.I.R. 1966 M.P. 136.
(23) A.I.R. 1963 A.P. 83.

the presence of the petitioner so as to enable him to cross-examine them. In the end reference has been made to the Full Bench decision of this Court in *Ramesh Kapur* v. *The Punjab University and another* (24), In that case, the following question formulated by a Division Bench was considered by a Bench of five Judges :—

> "Can the University authorities be said to have complied with the rules of natural justice if after giving a hearing to a candidate they collect some other material and take the material so collected into consideration in coming to a decision prejudicial to the candidate without confronting the candidate with such material and giving him an opportunity to offer such further explanation as he may have to offer ?"

The learned Judges of the Full Bench did not find it possible to answer the question referred in a rigid and pedantic fashion and considering it feasible only to state the basic principles, the answer was framed in the following terms :—

> "It will depend on the facts and circumstances of each case whether the rule of natural justice has been complied with by the University authorities by affording an adequate opportunity to a candidate to present his case against the charge or allegation made against him. It may be added that if the right of a candidate to be heard is to be a reality, he must know the case which he has to meet and if he asks the University authorities to supply him with necessary details of such material or evidence on which the case against him is based, any refusal to do so will be *prima facie* violative of the rule of natural justice."

Shri G. P. Jain has very frankly stated that this decision does not carry the matter any further than what was the legal position enunciated under the various decisions of this Court. A suggestion has also been thrown that in that very case the Division Bench finally deciding the appeal after securing the opinion of the Full Bench went a little further than the Full Bench.

Shri G. P. Jain, has also submitted that there is no basis for the contention that the proceedings against the candidates against whom

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(24) I.L.R. (1964) 2 Punj. 955=1965 P.L.R. 101.

enquiries for misconduct during the examinations are being held, should, as a matter of law, be enunciated or started by the Standing Committee acting collectively, nor is there any rule of natural justice demanding such a course. He has further added that the Assistant Registrar of the University was merely collecting evidence and this function can quite consistently with the recognised rules of natural justice be performed by him. The counsel has added that there is no provision of law which demands that all the members of the Standing Committee should sit together and consider the case by oral discussion. If the Registrar writes down his note and that note is circulated to the other members of the Committee, who express their opinion on the merits of the case after going through the said note, the procedure so adopted cannot be struck down as necessarily violative of natural justice. He has drawn our attention to Regulation 19 contained in Volume 1 of the Panjab University Calendar which is in the following terms :—

> "19. The Syndicate shall appoint annually Standing Committee to deal with cases of the alleged misconduct and use of unfair means in connection with examinations. When the Committee is unanimous, its decision shall be final except as given in the proviso below. If the Committee is not unanimous the matter shall be referred to the Vice-Chancellor who shall either decide the matter himself or refer it to the Syndicate for decision:
>
> Provided that in cases of the alleged use of unfair means in connection with examinations if in the opinion of the Vice-Chancellor facts have been brought to light within 30 days of the receipt of the decision by the candidate which, had they been before the Committee, might have induced them to come to a decision other than the one arrived at, then the Vice-Chancellor may order that such facts be reduced to writing and placed before the Committee.
>
> The Committee shall then reconsider the case. A unanimous decision of the Committee shall be final, But in the event of a difference of opinion the case shall be referred to the Vice-Chancellor who may neither finally decide the case himself or refer it to the Syndicate for final decision as he thinks fit.

This provision, according to the counsel, is wide and elastic and confers on the Standing Committee large discretion for adopting whatever procedure it considers to be fair and appropriate. The counsel

has stated from the bar that there are 5,000 cases of misconduct during examinations every year, with the result that it is impracticable for the members of the Committee who reside in different towns to meet together for considering each individual case at one sitting. It may be pointed out that there are three members of the present Committee, two of them are retired judicial officers of experience. The learned counsel has placed before us the original record which shows that there is a note covering about 9 pages by the Registrar of the University bearing his signatures, dated 26th October, 1965, going into the anonymous complaints alleging use of unfair means by these candidates of the Higher Secondary (El) Examination held in February, 1965 at Dina Nagar Centre. This note also contains discussion on the present case. The note of the Registrar was thereafter sent to Shri G. L. Chopra, a retired Judge of this Court, who went through the answer-books of Roll Nos. 100704 and 100705 and felt that answer to question No. 2 in English 'B' had undoubtedly been copied by 100705 from the other and with this observation, agreed with the recommendation that the said candidate be disqualified for a period of two years. Shri G. L. Chopra, was also of the view that this copying could not have been possible without the connivance or active help of Roll No. 100704, but since the Expert had expressed some doubts, Shri G. L. Chopra agreed to give the benefit of doubt to the candidate (100704). This opinion was recorded on 3rd November, 1965. The papers appear to have then gone to the third member who is a retired District Judge. After going through the entire record, he felt no hesitation to agree to the recommendation and his note is, dated 11th November, 1965. Shri G. P. Jain has also shown us the two relevant answer-books and has tried to support the view of the Expert and of the members of the Standing Committee on the basis of these answer-books, though he does contend that it is not for this Court to evaluate or appreciate the said evidence for determining whether or not the conclusion by the members of the Standing Committee was correct.

We have devoted our most anxious care and thought to this case because there has been in late years an alarming increase in the number of cases of unfair means during examinations and also because the University authorities have in spite of positive suggestions made by this Court not cared to frame and adopt any reasonably precise rules for enquiring and disposing of such cases. As far back as February, 1964, in *Harbans Singh Nirmal* v. *Panjab University*, (25), affirming on Letters Patent Appeal the decision of my learned

(25) 1964 P.L.R. 992.

brother Pandit, J., a Bench of this Court made the following observations :—

> "Before closing the judgment, I consider it appropriate to point out that recently a large number of petitioner under Article 226 have been presented to this Court against the University challenging its action against the examinees, and in each case the main basic challenge has invariably been sought to be founded on violation of the rule of natural justice in not giving the aggrieved party a fair hearing. Though mere absence of precise rules for such enquiries may not by itself attract the challenge of failure of natural justice, nevertheless, for the guidance of its officers entrusted with such enquiries, if for no other reason, the University might well consider the desirability of framing some more precise and definite rules of procedure for the purpose. Decision in such matters must be given in the spirit and with a sense of responsibility of a Tribunal with a duty to meet out justice, undeflected by prejudice, interest or caprice. For this purpose, it is necessary to preserve a judicial temper and treat the matter in a judicial spirit. Sense of justice may not come to all men by entomatic infallible instinct; it comes by, to reproduce the well-known expression 'reason tested by experience and expreience developed by reason'. Judicial process can more easily find expression in administrative sphere by prescribing some rules of procedure for guidance."

Since then whenever an enquiry was made from the counsel appearing on behalf of the University, this Court was informed that rules were being framed. It is a matter for genuine regret that the question of making rules has not been given by the University the importance it deserves. That even the increasingly deteriorating state of affairs in the examination halls with the consequent increase in the cases in which the action of the University is challenged in this Court should have failed to impress on the University the desirability of taking suitable steps with due promptitude for framing appropriate rules is not easy for this Court to appropriate. It, however, suggests that the University has not realised the gravity of the situation disclosed by the rapid decline in the standard of integrity, honesty, truth and scholarship amongst the examinees and of efficiency and sense of duty as also perhaps of discrimination between

right and wrong amongst the supervisory staff in the examination halls. I may point out that disinclination to lay down or clearly enunciate the principles or rules to be followed for the benefit of the persons concerned so that the enquiry proceedings may have an aspect of certainty, betrays a very weak feature of the system adopted by the University. It cuts across the disposition towards consistency which is a deep urge of a democratic mind. I cannot help observing that the order of human society is based upon the fact that, in general, legal duties are being performed, not upon the fact that failure to perform them gives rise to a cause of action. The centre of gravity in case of legal development lies not in legislation nor in juristic science nor in judicial decisions but in society itself. It would have been a healtheir sign of our democratic existence if the University had shown a sense of anxiety in conformity with the principles set down in our Constitution to frame rules with reasonable expedition.

Turning to the legal position, it is obvious that before the Full Bench in the case of Ramesh Kapur, on behalf of the candidate it was not contended—and it was observed by the Court that the counsel could not contend that oral hearing should necessarily have been given before the Standing Committee. It was further conceded there that only adequate opportunity of presenting his case is under the law to be given to the candidate concerned. On behalf of the University also, it was ultimately conceded—and the concession was described to be fair and proper—that if the candidate, after being informed of the charge or the allegation, made a request for the supply of any information relating to the material or evidence against him, the University authorities, in all fairness, would have supplied the requisite information. The answer given by the Full Bench to the question referred leaves each case to be determined on its own facts. It is no doubt true that the University authorities when dealing with cases of misconduct and use of unfair means in connection with examinations perform quasi-judicial functions. But Regulation 19 does not suggest that show-cause notice to the candidate concerned must also necessarily be given by the Standing Committee appointed by the Syndicate of the University in which the Executive Government of the University vests : section 20 of the Panjab University Act. Does any recognised rule of natural justice compel such a construction of this regulation ? Now, the expressions "rule of natural justice" and "quasi-judicial" are both lacking in precision. Again administrative and quasi-Judicial functions seem to me to be intermingled. But the rules of natural justice are not exactly those of Courts of justice. They are rather those desiderata which are

regarded as essential in contradistinction from the many extra-precautions helpful to justice, but not indispensable to it, which, by those rules of evidence and procedure, the Courts have made obligatory in actual trials before themselves. As observed by the Supreme Court in the case of *Balgeshwar Prasad*, it is not reasonable to import into enquiries like the present all considerations which govern criminal trials in ordinary Courts of law. I find from the judgment in *Balgeshwar Prasad's case* that the notice there had been issued to the examinee concerned by the Prinicpal of the school from where he had appeared for the High School Examination calling upon him to appear before the Sub-Committee to answer the charge of using unfair means. The broad fundamental principle of natural justice which concerns us in this case, namely, a man has a right to be heard, is only fair-play in action, its essential requisities being at least to include that before some one in condemned, he has to have an opportunity of defending himself and in order that he may do so, he is to be made aware of the charges or allegations or suggestions which he has to meet. It embraces the whole notion of fair-play and is basic to Indian Republican system which is rooted in English system. Whether or not this rule has been complied with, would obviously depend on a variety of circumstances. In each case the Court has to satisfy its conscience that the person against whom adverse action is proposed has been afforded a fair chance of convincing the authority proposing to take action, that the grounds on which the action is proposed, the material on which the allegations are based either do not exist or they do not justify the action proposed. A decision of this type must, from its very nature, depend on all the peculiar facts and circumstances of a case, including the nature of action proposed, the grounds thereof, the attitude of the party proceeds against in showing cause, the nature of his plea in answer, his admission by conduct or otherwise of some or all the allegations, his request for further opportunity, his age and antecedents and all other matters which cannot be exhaustively enumerated or visualised, which assist the mind in coming to a fair conclusion on the question. It is accordingly inadvisable and inexpedient—if not misleading—to look for complete analogy from cases under other statutes designed in different settings to achieve different purpose through a different process. In the instant case, I am unable to hold that merely because notice to show cause did not emanate from the Standing Committee, it must be held to be vitiated nullifying all the subsequent proceedings. Nothing has been urged to persuade me to hold that the giving of notice by the Standing Committee was essential and indispensable to justice.

The contention strongly pressed on behalf of the petitioner that the Standing Committee had no jurisdiction to delegate to the Assistant Registrar the function of examining the candidate and collecting evidence may now be dealt with. Once it is held, as I have done, that the analogy of trial in ordinary Courts is misleading and this basic holding is kept clearly in view, considerable misunderstanding and confusion of thought would be avoided. Decisions dealing with the Courts and with the arbitrators also lose much of their persuasive value. This would also take away considerable cogency from the petitioner's argument that all the members of the Standing Committee must necessarily perform all functions by meeting together and that right of cross-examining witnesses is inviolable and fundamental to the validity of all quasi-judicial proceedings. Incidentally such a general right of cross-examination was not affirmed by the Supreme Court in the *State of J. & K.* v. *Bakshi Gulam Mohammad*, Cr. A. 1102 of 1966, decided on 6th May, 1966. On the particular statute before that Court also, such a right was negatived. Looking at the matter in this background, can it be said that the appointment of the Assistant Registrar to collect the evidence is a delegation of the essential basic quasi-judicial duty which is violative of the recognised rules of natural justice vitiating and nullyfying the final decision ? In my view, merely getting the evidence collected by the Assistant Registrar by itself cannot *per se* be held to be without jurisdiction or so fundamentally infirm as to nullify or render void the subsequent proceedings.

The next question relates to the effect of the Standing Committee having never examined Bharat Indu and confronted him with the answer-books which is the sole basic evidence on which action has been taken. This and the connected argument that the Expert was also not examined by the Standing Committee really pose a serious and disturbing problem on the peculiar facts and circumstances of the case in hand which has given me some cause for anxiety. The legal position seems to me to be clear that failure to examine the witnesses itself does not necessarily invalidate its proceedings or vitiate its conclusions. The question really depends on the facts and circumstances of each case. In the case in hand, the fact is that after the receipt of an anonymous complaint the Sub-Examiner and the Head Examiner in English Papers "A" and "B" were requested to scrutinise, among others, the papers of the Roll Nos. 100705 and 100704. In English paper 'A', both the examiners exonerated these candidates. In English Paper 'B' the Sub-Examiner exonerated

the candidates but the Head Examiner felt that both the candidates were guilty of using unfair means during the examination. In Annexure R. 1, Shri L. D. Gupta reported after scrutinising the answer-books of the two candidates that question No. 2 dealing with translation from English into Hindi was "nearly the same in both the answer-books". He, however, found it difficult to say as to who had copied. These two answer-books were then sent to Prof. Ish Kumar for examining these two answer-books for his expert opinion. The report of Shri Ish Kumar is, in my opinion, necessary to reproduce at this stage :—

> "The Sub-Examiner says that there is no indication of copying. The H. E. interprets it as if there were. If that is how the unfair means cases are dealt with, God help poor candidates.
>
> I agree with the H. E., however, that Q. II betrays copying. Roll No. 100705 appears to have copied from Roll No. 100704. The order of seats confirms that. The former may be asked to read out the words encircled by me with blue pencil and give their meanings. Let him also read out the passage as a whole if he can make any sense. It is evident that he copied *kaum* (in Hindi characters) (illegible) from the latter who later changed it to *jaati* or *jaatian* (in Hindi characters) which he did not notice. The slight differences are clear indication of the fact that he was copying without much intelligence.
>
> Sd/- Ish Kumar
> 8-8-65.
>
> *P. S.*—Please do not send any more cases to me. I am very busy these days.
>
> Sd/- Ish Kumar."

Pursuant to these observations of Prof. Ish Kumar, the University Expert, the two candidates were again summoned and the reports of the Head Examiner and of the University Expert were shown to them along with their answers to question No. 2 in English Paper 'B', Roll No. 100705 (the present petitioner) was able to give the meanings of all the words except "community" and Hindi word "*ghrina*". Regarding the passage mentioned by the University Expert, Shri D. P. Verma, Assistant Registrar, described the meaning thereof as given by the candidate to be "just very ordinary" and added that the

candidate "could not explain the last line in the passage written in his script" which the Assistant Registrar had marked with red pencil. The University Expert was asked to give his final reply so that the candidate could be confronted with the same on that very day to obviate summoning the candidate again. The University Expert thereupon expressed his opinion thus :—

> "The very fact that the candidate could not give the meaning of the two words and could not explain the last line indicates that he is guilty. It is a translation passage and he cannot say that he crammed them without understanding. Whether Roll No. 100704 is guilty of having allowed copying is doubtful especially when the words that he changed later have not been copied out."

This happened on 28th September, 1965. The relevant papers were then forwarded to the Registrar who purports to have prepared a note which bears the initials of two persons, dated 22nd October, 1965 and the signatures of the Registrar under date 26th October, 1965 disqualifying Roll No. 100705 for two years and giving Roll No. 100704 benefit of doubt. One of the two initials, dated 22nd October, 1965, appear to be those of Shri D. P. Verma, Assistant Registrar. The papers were then sent to Shri G. L. Chopra, one of the members of the Standing Committee, who expressed his opinion that answer to question No. 2 had undoubtedly been copied by Roll No. 100705, adding that this could not be done without the connivance and active help of Roll No. 100704. But in view of the doubt expressed by the University Expert he also decided to give the candidate (Roll No. 100704) benefit of doubt. This opinion was recorded on 3rd November, 1965. Shri Sher Singh, the third member, on 11th November, 1965, agreed with the recommendation.

I cannot help observing that on the facts and circumstances of this case, the manner in which the petitioner's case (Roll No. 100705) has been dealt with is highly unsatisfactory and the procedure adopted is violative of the essential rules of natural justice. The Assistant Registrar seems to have held the real enquiry who does not even admit to have been delegated any power by the Standing Committee. The opinion of the University Expert in this case is the real basis of the action taken and the procedure adopted by the said Expert is virtually to re-examine the petitioner (Roll No. 100705) rather than to consider the question of his having actually copied from the other candidate (Roll No. 100704). The examination had taken place as early as February, 1965 and the petitioner was questioned on 28th

September, 1965 in much the same way in which he was expected to take the examination and his unsatisfactory nature of the answer formed the main, if not the *sole,* basis of the finding that he had copied from Roll No. 100704. I have gone through the entire record relating to the enquiry which the University has rightly and fairly produced before us and on going through it I can unhesitatingly say that the rules of natural justice have quite clearly been violated in Bharat Inndu's case. It is the Assistant Registrar, as observed earlier, who virtually dealt with the whole case as if he had been appointed by the Syndicate to hold the enquiry. The Head Examiner and the University Expert never examined the candidate and the latter did not even care himself to confront the candidate with the answer-books and to satisfy himself by questioning the candidate for clearing his own doubts. The opinion expressed by the University Expert seems to me to be somewhat casual and careless. It is not even disclosed on the record before us as to what are his qualifications for being an Expert in the line in which he is represented to be one. Again it was the Assistant Registrar who questioned the candidate and after securing his answer, the same day the final opinion of the University Expert was secured in order to obviate the inconvenience of again calling the candidate. I am far from satisfied with this nature of hurried deal in this matter and it appears to me that considerations of convenience have unduly dominated the consideration of justice in this case. The far-reaching consequences which the action proposed was to have on the petitioner's career have been given scant regard and to me it smacks of administrative rather than a quasi-judicial approach. On this material, the Registrar is shown to have expressed his opinion under the date 26th October, 1965, though this opinion, as observed earlier, also bears the initials of two other officers, one of them presumably being the Assistant Registrar. The impression created on my mind by the record is that for all practical purposes the enquiry was held by the Assistant Registrar and the Registrar signed the type report.

We have also seen the answer-books of the two candidates concerned and I am sorry to observe that some vital aspects have most curiously been ignored in this case. Roll No. 100704 had first of all answered question No. 1, then question No. 7, then puestion No. 6, then question No. 5 and then question No. 2, which was answered on the fifth page of the answer-book. The petitioner (Roll No. 100705) has answered first of all question No. 1, then question No. 7 and then question No. 2 which is at page 3 of the answer-book. No one seems to have applied his mind to this aspect If the petitioner

(Roll No. 100705) had answered question No. 2 in point of time before Roll No. 100704 did, then the conclusion of the former having copied from the latter would be wholly unsustainable. This aspect is not irrelevant and, in my view, demanded consideration at the hands of the Standing Committee. It is note worthy in this connection that the Centre Superintendent of the examination centre concerned, when informed about the anonymous complaint which constitutes the basis of the present enquiry, replied, *inter alia*, as follows:—

> "It is already well-known to me that Dinanagar centre is notorious for whole-sale copying. It is also a bare fact that the sister institutions are full of jealously against one another. The nature of general public of the town is also mischievious. This is why I have been very strict from the very beginning and have also instructed my deputies and supervisory staff to be so.
>
> I can say with full courage and confidence that there is nothing of the sort (wrongly written as sent) as mentioned in your No. 1957/ UMC dated 3rd March, 1965.
>
> Any how I have begun seating the roll numbers mentioned in your letter referred to above in the Hall, in front of me, in all the subjects.
>
> I most welcome any inspector/checker (even from the University direct) at any time and with the grace of God, I hope he would find nothing of the sort as mentioned to you by some mischiefmonger."

The note of the Assistant Registrar further suggests that the Centre Inspector had also visited the examination centre in question on 24th February, 1965 and 1st March, 1965. On the peculiar facts and circumstances of this case, and particularly on the categorical statement of the Centre Superintendent it was incumbent on the Standing Committee or at least some members thereof to examine both the Expert and the Centre Superintendent and form their own independent judicial opinion on a consideration of the entire case. To leave it to the University Expert, about whose qualification nothing has been disclosed to us, was, in my view, a clear abdication

of the solemn responsibility of the Standing Committee which is clearly violative of the rules of natural justice. The opinion of Shri G. L. Chopra quite clearly supports this abdication. Indeed on the facts of this case it would have been more satisfactory if the members of the Standing Committee had together examined Prof. Ish Kumar informing him that the Centre Superintendent had categorically asserted that no unfair means were used in the examination hall. I am also inclined to think that on the material on the present record, no reasonable person with a quasi-judicial approach could have come to the conclusion to which the Standing Committee is stated to have come. It accordingly seems to me also to be a case of no evidence and, therefore, liable to be quashed on this ground. I am, however, basing my conclusion on the ground of failure on the part of the Standing Committee to deal with the case fairly and judicially, thereby violating the rules of natural justice. The manner in which this case has been dealt with betrays a dominating administrative approach as if influenced by policy consideration wanting in the alertness and vigilance of the judicial gaze expected of a quasi-judicial body like the Standing Committee. Keeping in view the apparently immature mind of the petitioner and his denial of the allegation coupled with the categorical assertion by the Centre Superintendent, it would have better conformed to the principle of fair-play as represented by the rules of natural justice if the Centre Superintendent of the examination centre had also been examined by the Standing Committee in the presence of the candidate. Indeed on the peculiar facts and circumstances of this case the candidate should in fairness, have been told that he could, if he so desired, produce defence evidence and had he been informed of the statement of the Centre Superintendent, he would probably have produced him in his defence. Omission in this respect too seems to me to be an infirmity encroaching on the rule of fair-play which bodies, like the Standing Committee, are expected to observe.

For all the foregoing reasons, I feel constrained to allow C.W. 379 of 1966 and to quash the impugned order of disqualification which I hereby do. There would, however, be no order as to costs.

Coming now to C.W. 1466 of 1965, the petitioner Devinder Kumar Gupta appeared in the Higher Secondary (Elective) Supplementary Examination in August, 1964 with his examination centre being in the Government Higher Secondary School, Gurgaon. On 12th August, 1964, when he was taking the examination in Physics Paper 'B', the Supervisor suspected that he had a piece of paper with him.

On searching his pockets and the answer-books in the presence of the Centre Superintendent, the Supervisor found a piece of paper in the petitioner's left hand. The petitioner declined to make any statement. The reports of the Centre Superintendent as also of the Supervisor induced the University authorities to investigate into the matter. The petitioner was directed to appear before the Deputy Registrar, Examinations in his office on 13th November, 1964 for the purpose of the enquiry informing him that at the time of interrogation, all the accusations made against him and the material on which they are based would be brought to his notice in writing and he would be afforded a reasonable and adequate opportunity of explaining his position. The petitioner appeared before the Assistant Registrar (Examinations) on 13th November, 1964 when he was shown the reports of the Supervisor, the Deputy Superintendent and of the Centre Superintendent along with his answer-book and the incriminating paper recovered from him. The petitioner was given a questionnaire which he was required to answer in his own hand. This questionnaire Exhibit R 4 attached to the written statement merely relates to the factum of recovery of the incriminating piece of paper from him.

On 12th November, 1965, when this writ petition was heard by Narula, J. the learned counsel for the University was directed to file a copy of the order or resolution of the Standing Committee by which the petitioner had been disqualified. I find from the record that the document produced by the University marked at the top "confidential" contains the statement of the Supervisor or the member of supervisory staff followed by the statement of the Deputy Superintendent and then followed by the report of the Superintendent. Against the "statement of the candidate', it is stated that he had refused to give his statement. Then come the observations by the office which are in the following words:—

> "The candidate was sent for and interrogated in this office on 13th November, 1964 (see ps. 15 and 16). He denied the charge and pleaded that he had handed over this slip to the Superintendent before the commencement of the Examination.
>
> This statement of the candidate is a tutored one and cannot be relied upon on the face of direct evidence of copying.
>
> The scrutiny of his answer-book (at page 11) will show that he has copied at page 1 and 2 of the same from the incriminating slip at page 10. Hence a clear case of 'copying'.

Recommended that the candidate be disqualified for two years i.e. August, 1964 to March, 1966 (four sessions) under regulation 12(b) at page 89 of the P.U. Cal. 1962 (Vol. 1).

(Sd.) . . . .,
Deputy Registrar (Exams.).

Members of the Standing Committee.

Agreed.

(Sd.) . . . . ., G. L. CHOPRA,
24.11

Agreed.

(Sd.) . . . . ., SHER SINGH,
2.12

It is obvious that it is Deputy Registrar, who has done everything and the question whether the petitioner had actually copied from the alleged incriminating paper was never put to him. May be that in so far as the question of finding the piece of paper from his possession is concerned, the student may not have been prejudiced by the procedure adopted but once I feel that the whole procedure is tainted with a serious infirmity violative of the recognised rules of natural justice and that in the final order the Deputy Registrar, Examinations, has been considerably influenced by his opinion that the petitioner had also copied from the incriminating paper, I cannot help feeling inclined to quash the impugned order which I hereby do. It may not be inappropriate to point out at this stage, that the petitioner was allowed to appear in the examination and I am informed by his counsel Ch. Roop Chand that he has actually succeeded in August, 1966, the period of disqualification is also stated to have expired.

The result, therefore, is that for the foregoing reasons, this petition is also allowed and the impugned order quashed. There would, however, be no order as to costs in this case as well.

I would be failing in my duty if I did not advert to the failure of the University authorities to see that the supervisory staff they employ in the various University examination centres are men of character and integrity. The very fact that in the examination centre at Dina Nagar, as admitted by the Centre Superintendent, cases of use of unfair means have been occurring in large numbers is a matter for grave concern and it does not bring any credit to the University Authorities. I have been informed that no action has been taken against the supervisory staff of the said centre and the reason which has been assigned is that there was no reliable material for taking any action against them. This seems to me to be a wholly unconvincing reason. The very fact that in the centre according to the Standing Committee, the petitioner Bharat Indu had copied from some other candidate should have been enough material to establish the inefficiency of the supervisory staff. If action was considered justified against the candidate, there was no logical justification for omitting to take action against the staff at the centre in question and indeed none is pointed out to us. However, I need not say anything more on this subject at this stage.

I must point out that in a democratic set-up no person or body of persons should make any order which they are enjoined to make in their quasi-judicial proceedings without keeping in view the interest of the party affected and without giving to such party an adequate opportunity of meeting the case and of controverting the material on which the authority proposing to take action intends to rely. Such an attitude is all the more desirable on the part of educational authorities because it is the standard of education of the citizens which reflects the standard of democratic set-up in a country. Youth, it must never be forgotten, has to be handled with great care in a country like ours which became free in 1947 and a Republic in 1950 in which fundamental freedoms are guaranteed to every citizen and democratic equality of opportunity for all under the Rule of Law is the sheet-anchor of the constitutional set-up. We have won our freedom after a long and desperate struggle against a powerful empire. Freedom, it is worth remembering, is not easily gained and once surrendered or lost—however necessary or compelling it may be—it is even less easily regained. To preserve our freedom, therefore we must ensure that the youth of the country possess a disciplined and healthy mind and they cherish implicit faith in our democratic set-up which is founded on the principle of truth, integrated co-existence, justice and fairplay. This result can only be achieved by proper education and to this end, our Universites have a great responsibility to discharge. They are expected

to act with dynamic urge to adequately equip, by all possible means, the youth of today for bearing in future the burden of sustaining our democratic freedom and of intensifying the nation's march towards the general integrated progress and prosperity inspired by the cherished ideals embodied in our Constitution. The general unrest amongst the youth in our country reflects discontentment with the existing conditions and it is melancholy to reflect upon the amount of unharnessed energy, misguided talent and frustrated aspiration being misused in destructive activities by the youth. The situation is extremely delicate and it appears that we have not been able to educate and train the nation, particularly the young people, on true democratic lines. It is, however, hoped that the Universities, whose duty and patriotic privilege is to educate and train young people, on whom principally—if not wholly—rests the future of the country, would perform their duty with a proper sense of patriotism and responsibility in building up and moulding the character and moral fibre of young Indians on right and healthy democratic lines. When taking action against students for misconduct or use of unfair means, the University should set example of proper democratic attitude by adopting a truly quasi-judicial approach in determining their guilt. Actual practice has more educative value than mere precept. This Court hopes that the University authorities would at least now frame proper rules for the future guidance of those who are entrusted with enquiries into cases of misconduct and use of unfair means in the examinations. Their failure even at this point of time to realise the necessity of having proper rules, would merely reflect an undemocratic attitude wholly incompatible with the present constitutional set-up which will do more harm than good to the cause they seek to serve. I have felt constrained to make the above observations in view of the current explosive situation created by the indiscipline and feeling of frustration exhibited by the students generally in this country.

PREM CHAND PANDIT, J.—I agree.

K.S.K.