

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 8287/2011 and CMs 18732-33/2011**

Decided on 24.11.2011

IN THE MATTER OF
SATISH KUMAR SINGH

..... Petitioner

Through: Mr. R.R. Jangu, Advocate

versus

DELHI UNIVERSITY

..... Respondent

Through: Mr. Mohinder J.S. Rupal, Advocate

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner praying *inter alia* for quashing of the memorandum dated 23.09.2011 issued by the Examination Branch of the respondent/University and for issuance of direction to the respondent to allow the petitioner to appear in the up-coming exams of the final year.

2. The brief facts of the case are that the petitioner, who is a student of the LLB course being run at the Campus Law Centre of the respondent/University for the years 2009-12, appeared for his IV semester annual examination for the academic year 2010-11 on 21.07.2011. Counsel for the petitioner states that out of the six papers that the petitioner appeared for, he was declared as having passed in

three papers, namely, LB-401, LB-402 and LB-4038. On 26.07.2011, the petitioner took admission for the V semester. Thereafter, the petitioner was issued a notice to show cause dated 04.08.2011 by the respondent, on the basis of the report of the Superintendent of the Examination Centre to the effect that unauthorized handwritten material was recovered from his possession while giving the examination in the paper LB-4035 of LLB IV term held on 21.05.2011. It is an admitted case that the petitioner gave a reply to the aforesaid show cause notice and he was granted a personal hearing by the respondent.

3. After considering all the documents on record including the submissions made by the petitioner before the Examination Disciplinary Committee, the matter was placed before the Executive Council of the respondent/University and the said Council decided that for the use of unfair means, the petitioner be awarded punishment under Clause B of the guidelines circulated to him with the admission ticket, which stipulates cancellation of the entire examination. The aforesaid decision was communicated to the petitioner vide memorandum dated 23.09.2011. While informing the petitioner that the entire examination (in all the papers and subjects) taken by him under Roll No.67075 issued to him for the examination stood cancelled, he was informed that he would be eligible to be admitted to the said examination afresh as and when the same is held subsequently. Aggrieved by the aforesaid memorandum, the petitioner has preferred the present petition.

4. Learned counsel for the petitioner states that though the enquiry was pending, the results of the petitioner for the fourth Semester were declared on the notice board of the Campus Law Centre-I and hence, any subsequent action on the part of the respondent/University, directing cancellation of the entire examination of the petitioner is arbitrary. It is further stated that as per Ordinance X-A, which deals with Disorderly Conduct and Use of Unfair Means in Examination, "the use of dishonest or unfair means" implies carrying into the examination room, any book, paper, notes or other material whatsoever likely to be used directly or indirectly by the candidate in connection with the examination, whereas in the present case, the petitioner did not carry any such material in the examination hall. He further states that sub clause 13A. of Ordinance X-A cannot be construed as a mandate to cancel the examination of the petitioner after his results have been declared. It is lastly stated that the petitioner having already taken the admission for the final year and having submitted his admission fee, cannot be called upon now to take his examination afresh for the course.

5. Counsel for the respondent/University, who appears on advance copy, states that the present petition is misconceived inasmuch as clause B of the guidelines circulated to the petitioner alongwith the admission ticket clearly stipulates that in the event of adoption of unfair means/indulgence in disorderly conduct, the candidate would be awarded punishment of cancellation of his entire examination, which fact was well

within the knowledge of the petitioner and despite the same, he indulged in using unauthorized handwritten material found scribbled on his admit card. It is further stated that Ordinance X-A of the University and the guidelines circulated to the petitioner mandate that in such circumstance, the examination of such a candidate would stand cancelled and upon an enquiry, if punishment is imposed on him after a hearing, he would not be entitled to take that examination.

6. This Court has heard the counsels for the parties and perused the documents placed on record.

7. It is not denied by the learned counsel for the petitioner that unauthorized handwritten material was recovered from the petitioner's possession, which was scribbled by him by a pencil on his admit card. The ostensible explanation offered by the petitioner for the aforesaid material found from his possession is that before entering the admission hall, the petitioner forgot to erase the citations of 2-3 cases from his admit card. However, it is pertinent to note that the citations found scribbled on the admit card of the petitioner related to the question paper, for which the petitioner had sat on 21.05.2011 and the same is so noted by the Superintendent of the Examination Centre, who has observed in the show cause notice that the material recovered from the petitioner was to be used by him in answering question No.1(e) set in the question paper on the date of the incident.

8. A perusal of the aforesaid show cause notice further reveals

that in para 2 thereof, the petitioner admitted to his guilt, which is being sought to be explained in the writ petition by stating that the Invigilator and the Flying Officer of the respondent/University pressurized him to admit his guilt and further, that they changed the answer sheet of the petitioner. The submission of the counsel for the petitioner that the respondent/University having declared the result of IV semester, is barred from cancelling the said result, is devoid of merits inasmuch as any such inadvertent action on the part of the respondent/University cannot entitle the petitioner to claim any vested right in his favour in the light of sub-clause 13A of Ordinance X-A, which is reproduced hereinbelow for ready reference:-

“13A. A candidate against whom an enquiry is pending about his allegedly having resorted to the use of dishonest or unfair means or disorderly conduct in the examination or against whom action is initiated under the provisions of preceding clause shall, if he takes or has taken any subsequent examination, be deemed to have been only provisionally admitted to that subsequent examination. The examination will stand cancelled and his result thereof would not be declared if on account of the punishment imposed on him as a result of the said enquiry or action, he would not have been entitled to take that examination but for his provisional admission thereto.”

9. Similarly, the submission made on behalf of the petitioner that he was not found to have carried into the examination hall any book, paper notes or other material, is untenable in the light of the fact that even as

per the petitioner himself, he had scribbled some citations of certain judgments on his admit card found in his possession which related to the question paper which he was to answer on the relevant date, thus attracting the provision of Clause I (d) (iii) of Ordinance X-A, which is reproduced hereinbelow:

- ` "1. For the purposes of this Ordinance-
- (a) to (c) xxx
 - (d) The use of dishonest or unfair means in the examination includes:-
 - (i) to (ii) xxx
 - (iii) carrying into the examination room any book, paper, notes, or other material whatsoever likely to be used directly or indirectly by the candidate in connection with the examination.
..... "

10. It is apparent that the petitioner, instead of studying hard for his examination, tried to choose the easy way out by resorting to unfair means to pass his examination. This grave conduct of the petitioner ought not to be treated lightly and a severe penalty must be imposed upon him as a deterrent to others who may contemplate committing any such acts in the future. The action taken by the respondent/University in such circumstances is justified and cannot be faulted. The predicament in which the petitioner finds himself in, is his own making. Having indulged in such a disorderly conduct, it is inevitable that the petitioner suffers the consequences of his irresponsible behaviour.

11. In view of the aforesaid facts and circumstances, this Court does not find any illegality, arbitrariness or perversity in the impugned memorandum dated 23.09.2011, for interference in judicial review. The present petition is therefore dismissed *in limine* being devoid of merits.

NOVEMBER 24, 2011
rkb

HIMA KOHLI,J