

29

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 2689/2012

%

Judgment dated 17.10.2012

ARUN PAHUJA

..... Petitioner

Through: Mr.Ashok Arora, Advocate

versus

UNIVERSITY OF DELHI AND ORS

..... Respondent

Through: Mr.Amit Bansal and Ms.Ritika Nagpal, Advs

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Rule. With the consent of counsel for the parties, present petition is set down for final hearing and disposal.
2. Facts to be noticed for disposal of this petition are that petitioner is a student of Delhi University (School of Open Learning). He appeared in the B.Com. 3rd year examination and cleared his Bachelor of Commerce examinations in the month of May / June, 2011. After the declaration of the results on 23.03.2012, the petitioner received a Memorandum dated 20.03.2012 from the Deputy Controller of Examination.
3. Counsel for the petitioner submits that prior to the receipt of the Memorandum no show cause notice was ever issued to the petitioner. The petitioner was however, granted a personal hearing on 30.03.2012 at 2:30 p.m. by the Disciplinary Committee, wherein he was asked the reasons as to why his answer-sheets were identical to the answer-sheet to the student sitting behind him. The petitioner pleaded ignorance and also

denied that he had cheated from the answer-sheet of another student. By a communication dated 23.04.2012 the petitioner was informed that his entire examination stood cancelled, which has led to filing of the present writ petition.

4. The main thrust of the argument of counsel for the petitioner is that the Memorandum was issued at first without issuing a show cause notice, which is a gross misuse of the process of law. It is also contended that the memorandum is based on conjectures and surmises and also is in direct violation of Freedom of Education, hence the action of the respondent is arbitrary, illegal, malafide and in violation of Article 19 of the Constitution of India.
5. Counsel for the petitioner has relied in the case of **Rajesh Kumar and Anr. Vs. Institute of Engineers (India)** 1997 (6) SCC 674, in support of his argument that even if two answer-sheets are identical that by itself would not amount to cheating or use of unfair means, as even the Supreme Court has recognized the fact that there is a tendency of large number of students to cram before the examination.
6. The present petition is opposed by counsel for the University. Mr.Bansal, submits that the present writ petition is liable to be dismissed as University has complied with all provisions of Ordinance X-A, dealing with unfair means. Further principles of natural justice have been complied with. It is also submitted that petitioner was awarded due opportunity by issuing a show cause notice to defend himself and upon his request, the petitioner was also allowed a personal hearing before the Examination Disciplinary Committee where he admitted the charges against him and therefore the said Memorandum is in no way arbitrary or illegal. Accordingly, there is no violation of any legal, statutory or constitutional right of the petitioner.

7. It is submitted that a show cause notice was issued to the petitioner, copy of which has been placed on record. Mr.Bansal, submits that the show cause notice was posted at the same address at which the memorandum was issued and received by the petitioner. It is further submitted that during the personal hearing, in response to the memorandum the petitioner did not at any point of time dispute the receipt of show cause notice, neither the petitioner made any grievance that no show cause notice was issued to the petitioner.
8. It is further submitted by counsel for the respondent that the case of copying in respect of seven students, including the petitioner, was detected by the evaluator/ examiner. While evaluating the answer sheets of all the seven students, including the petitioner, the examiner reported that these students have copied all the answers from another student's answer script. The manner in respect of above referred seven students was reported to the Examination Branch –V (Branch dealing with cases of Unfair Means) of the University on 20.12.2011 for registration of Unfair Means (UFM) case. Thereafter, the result of all these seven students was withheld. As per the procedure, the case of said seven students was placed before an expert on 07.03.2012 for seeking his opinion/ observation about the UFM case. While going through the answer sheets of all the seven students, on 14.02.2012 the expert asked for the answer sheets of four other students, including the petitioner. After going through the answer sheets of these four students, the expert submitted his report wherein it was reported by the expert that the answer script of the petitioner was copied from the answer script bearing Roll No.3288076 and the result of petitioner which was declared on 10.11.2011, was withdrawn vide notification number S.No../NOT/2011/3365 dated 23rd March, 2012.

9. Counsel for the respondent disputes the submissions made by counsel for the petitioner that no show cause notice was issued to the petitioner. Mr.Bansal, submits that a show cause notice dated 12.03.2012 was issued to the petitioner, however, no reply was filed. Thereafter Memorandum dated 20.03.2012 was issued and petitioner was called upon to appear before the Examination Disciplinary Committee on 30.03.2012. The petitioner appeared before the Examination Disciplinary Committee on 30.03.2012, and accepted the charge against him. Since the petitioner did not offer any explanation to defend himself and admitted the charge against him, the Examination Disciplinary Committee after taking into consideration the facts and circumstances, vide its report dated 03.04.2012, recommended to the Executive Council, punishment under Category –B of the Guidelines prescribing punishment for use of unfair means at the University Examinations. That the Vice Chancellor under Clause (4) of Statue 11-G approved the recommendations of Examination Disciplinary Committee for award of punishment in respect of the Petitioner on 17.04.2012, which was subsequently reported to Executive Council.
10. Counsel for the respondent also submits that a lenient view was taken in the matter of petitioner, whereas the case of the petitioner falls in part ‘C’ and in which case not only would the entire examination be liable to be cancelled, but the petitioner would be further debarred from appearing in any examination within a span period of 12 months.
11. Counsel for the respondent relies upon the judgment delivered by the Apex Court in the case of **Sanchit Bansal Vs. Joint Admission Board & Ors.** (2012) 1 SCC 157 and **All India Council for Technical Education Vs. Surinder Kumar Dhawan** 2009 (11) SCC 726, wherein it was held that the courts are neither equipped nor have the academic or technical

background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. The role of statutory expert bodies on education and role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, the courts will step in.

12. I have heard counsel for the parties, considered the rival contentions and also carefully perused the pleadings, annexures and the original file produced by the counsel for the respondent. The first submission of counsel for the petitioner is that action of the respondent is arbitrary, illegal and malafide. The submission made is without any force as the counsel has failed to substitute his argument as to how the action of the University is arbitrary, illegal and malafide. It is also submitted by counsel for the petitioner that no show cause notice was issued to the petitioner. The submission of the counsel for the petitioner is also without any force. Copy of the show cause notice which has been placed on record and also available in the original file was issued to the petitioner at the correct address and at the same address where the Memorandum dated 20.03.2012 was issued and received by the petitioner. Moreover when the petitioner appeared before the Examination Disciplinary Committee on 30.03.2012, he did not make such a grievance although in the Memorandum reference of the show cause notice has been made.
13. The answer sheets of seven students including the petitioner was compared by the evaluator / examiner, who reported that all the seven students had copied from another student's answer script. The matter was reported to the examination branch, dealing with cases of Unfair Means.

After comparing the answer scripts the expert submitted his report. The University has initiated action under Clause 3 of Ordinance XA, which reads as under:

“3. A candidate found guilty of the use of dishonest or unfair means or disorderly conduct in the examination may be disqualified from passing the examination for which he was a candidate, and may, in addition, be debarred from appearing at any further examination of the University for a further period to be stated or be expelled from the University and declared not a fit and proper person to be admitted to any further examination of the University.”

14. A perusal of the record, which has been produced in Court, would show that the answer script of the petitioner was examined, firstly, by the evaluator/examiner. Thereafter the matter was referred to Examination Branch –V (Branch dealing with cases of Unfair Means) as the evaluator/examiner was of the view that the answer sheets of seven students including the petitioner contain material copied from each other. It is only thereafter that the matter was further examined by an expert and on the basis of the opinion of the expert action has been initiated against the petitioner.
15. Accordingly it cannot be said that the action of the University is illegal or arbitrary. The case of **Rajesh Kumar (Supra)** relied upon by the petitioner, in my view is not applicable to the facts of this case as the petitioner had admitted his guilt before the Disciplinary Committee, whereas in the case of **Rajesh Kumar (Supra)** it was the stand of the students that their answers were the same as both the students had prepared from the text book as available and further there was no chance for copying as students were sitting in different rooms. No such plea was raised by the petitioner after the receipt of the show cause notice or the memorandum or at the time of hearing. It would be useful to reproduce

the observations made by the Apex Court that in academic matters there should be strict discipline. In the case of **Ruchita Dhawan Vs. Chairman / Vice Chancellor**, 2010 (169) DLT 52, it was observed:

“8. It would also be relevant to reproduce the decision rendered by the Apex Court in the case of **Director Studies, Dr. Ambedkar Institute of Hotel Management , Nutrition & Catering Technology Chandigarh and Ors. Vs. Vaibhav Singh Chauhan** reported at (2009) 1 SCC 59, wherein it was held as under:

“12. The learned Single Judge in the interim order has then emphasized on the fact that the respondent had apologized and had confessed to the possession of the chit. In our opinion this again is a misplaced sympathy. We are of the firm opinion that in academic matters there should be strict discipline and malpractices should be severely punished. If our country is to progress we must maintain high educational standards, and this is only possible if malpractices in examinations in educational institutions are curbed with an iron hand.”

16. Counsel for the petitioner submits that respondent should have placed on record the postal receipts to show that the show cause notice was posted to him. In my view, it is not necessary in view of the fact that subsequently letters were received by the petitioner and further the Memorandum which admittedly was received by the petitioner mentions that a show cause notice was issued to the petitioner. It may be noticed that such an objection should have been taken by the petitioner at the first opportunity available, and thus, it seems that it is only an afterthought.
17. Perusal of the record which has been produced before court, reveal that the petitioner appeared for personal hearing and during the course of personal hearing candidate had accepted the charge of copying.

18. In view of the aforesaid facts and circumstances, the present petition must fail petitioner has failed to point out any patent irregularity or malafide in the decision making process of the University.
19. Accordingly the arguments raised by counsel for the petitioner are rejected and the petition is dismissed.

G.S.SISTANI, J

OCTOBER 17, 2012

ssn