

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 1st July, 2015

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W.P.(C) No.6172/2015 & CM No.11217/2015 (for stay)

TUSHANT

..... Petitioner

Through: Mr. Naveen Kumar Raheja and Mr.
Jasvinder Singh, Advs.

Versus

UNIVERSITY OF DELHI & ANR

..... Respondents

Through: Mr. Mohinder J.S. Rupal, Adv. for R-
1/DU.
Mr. Satyakam, Adv. for R-2/GNCTD.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The petition seeks annulment of the examination conducted by the respondent No.1 University of Delhi (respondent No.2 is Govt. of NCT of Delhi) for admission to the Master of Law (LL.M.) course of the academic year 2015-2016.

2. The petitioner claims to be a candidate in the examination, result whereof has not been declared as yet. The only basis for seeking the annulment of the examination, in which the counsel for the respondent No.1 University appearing on advance notice informs approximately 3500 students had appeared for 100 odd seats, is the FIR No.0148 dated 14th June,

2015 (Police Station Maurice Nagar) lodged by the official on duty at one of the examination centres at which the said examination was held i.e. at Faculty of Management Sciences, University of Delhi. In the said FIR it has *inter alia* been reported as under:

“Sir, I am to state that FMS was entrusted to conduct L.L.M. Entrance Test 2015 on 14-06-2015 from 10:00 a.m. to 12:00 Noon. Test Booklet and OMR Sheet were sent to the allocated Rooms at 09:30 a.m. and were distributed to the Students at

9:45 a.m. The Invigilators deputed in Room No.MDP-2 reported at 09:55 a.m. that Test Booklet Sheet along with OMR Sheet of Roll No.154250400 Test Booklet Serial No.10101 Series 11 has been taken away by some candidate and is not available in the Room. All the exit gates were immediately locked and all the rooms were checked to find the sheet. However, the same could not be traced. University authorities were also communicated about the incident and it was directed to lodge a F.I.R. immediately. It is, therefore, most humbly requested to lodge a FIR.”

3. Though the counsel for the petitioner on the basis of personal hearsay has made certain other arguments for annulment of examination but at the time when the order is being dictated states that the same may not be recorded.

4. I have enquired from the counsel for the petitioner that if in a competitive examination in which a large number of students have appeared, it is reported that at one of the centres for examinations two students were found cheating from each other, would that be a ground for annulment of the examination.

5. The counsel, to be fair to him, has not answered in the affirmative. He has however stated that in such an eventuality at least the identity of such two students would be known and the examination of the said two students only can be cancelled. It is argued that in the present case, it is not known as to who all have benefited from the missing Test Booklet Sheet along with OMR Sheet. The counsel, with his fertile imagination, states that the stolen Test Booklet must have been used to immediately have the questions therein solved from expert/s and the correct answers must have been communicated to a large number of students at all the Centres where the examination was held. It is stated that the magnitude of cheating in this manner cannot be known at this stage and would be known only after investigation of the FIR aforesaid.

6. I have further enquired from the counsel, whether there are reports from any other examination centres of any outside information i.e. answers solved by expert/s being passed on to the candidates taking the examination.
7. The counsel states that he does not know and has not even heard about the same till date but it will be found on investigation.
8. On enquiry, whether such can be a ground for annulment of examination, reliance is placed on paras 15 & 16 of the recent dicta dated 15th June, 2015 of the Supreme Court in W.P.(C) No.298/2015 titled ***Tanvi Sarwal Vs. Central Board of Secondary Education*** vide which All India PMT Examination was annulled.
9. However, a bare perusal of the said paras 15 & 16, need for reproduction whereof herein is not felt, shows that the situation there was entirely different. There, on investigation facts suggesting mass scale cheating with use of electronic media had been unearthed. All that we have in the present case is a missing Test Booklet. We do not even know as yet, whether the said Test Booklet is missing owing to any inadvertent error on the part of the authority / officials conducting the examination or was stolen by any person. There is nothing to suggest that anyone has benefited from

the said Test Booklet. Thus, the reliance placed on the judgment aforesaid of the Supreme Court is entirely misconceived.

10. No case for annulment of examination is made out. Competitive examinations, holding whereof takes mammoth organization, cannot be annulled on mere conjectures and surmises. It cannot be lost sight of that annulment of examination and consequent holding of fresh examination (which takes re-organization and hence time) ultimately delays the entire admission process and commencement of academic session and which in turn has cascading effect on subsequent years or reduces the length of the academic year. The same also results in the students being inconvenienced and being unable to make choices, of admission in other colleges / universities or subjects, which they can make with timely declaration of results and admission. Holding of fresh examination also, besides costing money, takes considerable effort. Annulment of examination without proper cause will thus be detrimental to the University as well as the large number of candidates taking the examination and against the public interest and would amount to a cure worse than disease. The Supreme Court in *Onkar Lal Bajaj v. Union of India* (2003) 2 SCC 673 while dealing with a challenge to the en masse

cancellation of all allotments of retail outlets for marketing of petrol and diesel and finding that the only reason for such en masse cancellation was that a 'controversy' had been raised in the media and that there was otherwise no application of mind and none of the allotments made had been examined held such en masse cancellation to be arbitrary and contrary to public interest. It was held that the mere reason that a 'controversy' had been raised by itself could not clothe the Government with the power to pass such a drastic order which has a devastating effect on a large number of people. It was held that such en masse cancellation could be resorted to only on finding a large number of such selections to be tainted and segregation of good and bad being difficult and a time consuming affair. The examinations are thus not to be annulled lightly, on the mere asking of any one with the allegations of possibility of the same having been corrupted. Only when it is sufficiently established that the examination though purportedly conducted was no examination and can no longer be treated as a test of proficiency of students taking the same or had ceased to be competitive and that the defects / malpractices therein had seeped to such an extent as to make it impossible for the examining

authority or the Court to determine a fair result of the examination would the Court, in my opinion, be justified in annulling an examination.

11. The Supreme Court in *Ashok Lenka Vs. Rishi Dikshit* (2006) 9 SCC 90 though concerned with en masse cancellation of excise licenses held that though in law it is permissible to cancel the entire selection process if it is held that the same is tainted to such an extent that it may not be possible to separate the innocent from the tainted ones, as for example in a case of mass cheating adopted by the students in a Board Examination, should not be resorted to if it is possible to separate the innocent from the tainted ones. It was held that en masse cancellation resorted to without a cause would be violative of Article 14 of the Constitution of India. Similarly in *Union of India Vs. Rajesh P.U., Puthuvalnikathu* AIR 2003 SC 4222 held that applying an unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of the selected candidates no infirmity could be found with reference to others is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go bye to contextual considerations and throwing to winds the principle of proportionality in going farther than what was strictly and reasonably required to meet the situation. It was held that

the Competent Authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, totally in excess of the nature and gravity of what was at stake, rendering the decision of cancellation to be irrational.

12. Recently a Division Bench of this Court in ***Mukesh Rao Vs. Union of India*** MANU/DE/0985/2015 (and against which no SLP is found to have been filed) set aside the order of cancellation of the Limited Departmental Competitive Examination upon not finding that anything which could be said to incriminate the petitioners therein or the other candidates in general. It was held that the cancellation was effected merely on suspicion which was unfounded and that the candidates taking the examination cannot be made to suffer. It was further held that cancellation of the entire selection process on a mere suspicion that 4 out of the 1228 candidates could have used their mobile phones is not a sufficient ground to cancel the entire selection process and that the selected candidates ought not to be disqualified by ordering re-examination.

13. The Supreme Court recently in ***Joginder Pal Vs. State of Punjab*** (2014) 6 SCC 644 again reiterated that where the tainted candidates in a

selection process could be segregated from others, innocent persons should not be punished with the tainted. The Supreme Court earlier also in ***Rajesh Kumar Vs. State of Bihar*** (2013) 4 SCC 690 had echoed the same sentiment in a case of erroneous answer key. It was held that innocent persons participating in the selection who had not contributed to the preparation of the erroneous key or the distorted result and who had not practiced any fraud or malpractice should not be punished. Accordingly the order of setting aside of the selection was substituted with a direction for re-evaluation.

14. There is another aspect. We are dealing with educational matters, in which the opinion of experts therein is not to be lightly interfered with. The respondent University, being the examining authority / body, on the aforesaid facts has not deemed a case for cancelling the entire examination to have been made out. The Courts are not to substitute their own opinion in such matters. The Supreme Court, reasoning so, in ***Chairman, J&K State Board of Education Vs. Feyaz Ahmed*** (2000) 3 SCC 59, set aside the order of the High court interfering with the decision of the examining body in that case to cancel the exam. To the same effect is the subsequent judgment in ***B. Ramanjini Vs. State of Andhra Pradesh*** (2002) 5 SCC 533. No case for

finding fault with the decision of respondent University to, in the facts, not cancel the examination is made out.

15. There is thus no merit in the petition, which is dismissed. I refrain from imposing costs.

Copy of this order be given *dasti*.

RAJIV SAHAI ENDLAW, J.

JULY 01, 2015

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