

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

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Date of decision: 11th January, 2016

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W.P.(C) No.2778/2008

PANKAJ DAHIYA

..... Petitioner

Through: Mr. R.K. Saini, Adv.

Versus

UNIVERSITY OF DELHI & ANR

..... Respondents

Through: Mr. Mohinder J.S. Rupal and Ms.
Simran Jeet, Advs.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the action of the respondent University of Delhi of cancelling the result of the petitioner of B.E. (Mechanical) course/programme and expelling the petitioner from the University. Axiomatically, the Memorandum dated 9th August, 2007 of the respondent University cancelling the result of all the B.E. examinations taken by the petitioner and the report of the Disciplinary Committee of the respondent University on the basis of which the Memorandum aforesaid has been issued are also impugned.

2. The petition was entertained, though interim stay sought of the aforesaid Memorandum not granted. Counter affidavit has been filed by the

respondent University and though no rejoinder thereto filed by the petitioner inspite of opportunity but an additional affidavit dated 9th July, 2012 was filed by the petitioner. The counsels have been heard.

3. The petitioner, on 24th July, 2000 was admitted to the Delhi College of Engineering (DCE) then under the respondent University, to the Bachelor of Engineering (Mechanical) course/programme consisting of eight semesters and by January, 2004 appeared and cleared seven semesters. The petitioner appeared for the 8th semester examination in May, 2004 but was declared fail in the theory paper in the subject of Industrial Engineering (bearing no.ME-411) and in the practical paper in the subject of Automobile Engineering/Engine Emissions (bearing no.ME/428/432). The petitioner on 11th March, 2005 registered himself only for appearing in the practical examination of Automobile Engineering/Engine Emissions as on qualifying the same he would have become entitled to be awarded the degree of B.E. and appeared in the said examination held on 29th April, 2005. However in the result declared in July, 2005, the petitioner was declared absent in the theory paper of Combustion Engines (bearing no.ME 416) for which he had not even registered and his result of the practical paper in the subject of Automobile Engineering/Engine Emissions was not declared at all.

4. The petitioner earlier filed W.P.(C) no.6897/2006 averring that though he had represented in this regard but no action was being taken thereon perhaps because of his alleged involvement in Delhi College of Engineering Entrance Paper Leaks Scam of the year 2005 and seeking a mandamus to the respondent University to declare the result of the petitioner of the practical paper taken by him in the subject of Automobile Engineering/Engine Emissions and if he had passed therein, to issue him the degree of B.E. (Mechanical). The said writ petition was accompanied with an application for interim relief and aggrieved from the non-grant of interim relief LPA No.996/2006 was preferred and vide order dated 14th June, 2006 wherein, the respondent University was directed to produce the result of the petitioner in the practical paper in the subject of Automobile Engineering/Engine Emissions.

5. The respondent University issued a notice dated 1st June, 2006 to the petitioner asking him to show cause why disciplinary action should not be taken against him on the ground that Central Bureau of Investigation (CBI) had filed a charge sheet against him in relation to the Entrance Paper Leaks Scam of the year 2005 and in pursuance whereof vide order dated 5th June,

2006 cancelled the result of the petitioner and expelled the petitioner from the University.

6. The petitioner then filed W.P.(C) No.104236/2006 impugning the said order of the respondent University and vide order dated 11th May, 2007 therein the said decision of the respondent University was set aside and the respondent University directed to give another opportunity to the petitioner to file a reply to the show cause notice and thereafter pass a fresh order.

7. In the light of the above, W.P.(C) no.6897/2006 filed by the petitioner and LPA No.996/2006 arising therefrom became infructuous.

8. In pursuance to the fresh show cause notice issued to the petitioner and the proceedings thereafter, the respondent University vide Memorandum dated 9th August, 2007 has found the petitioner to have committed gross indiscipline under Section 3(f) and 3(i) of Ordinance XV-B of the University of Delhi Ordinances and in exercise of power under clause 4(f) thereof has cancelled the result of all the examinations taken by the petitioner for the B.E. course/programme to which he was admitted and in exercise of powers under clause 4(a) of the said ordinance has also expelled the petitioner from the University.

9. The counsel for the petitioner has argued, (i) that the petitioner, after the declaration of the result of 8th semester examination had 226 credits as against 228 credits to be entitled to the degree in the B.E. (Mechanical) programme/course; (ii) it is for this reason only that the petitioner did not feel the need to again appear in the theory examination in the subject of Industrial Engineering in which he had failed; (iii) the petitioner could attain the deficient credits only by appearing in the practical examination in the subject of Automobile Engineering/Engine Emissions; (iv) that the result of the petitioner of the said examination would have been declared in July, 2005 had the respondent University not erred in treating the petitioner as having absented in the theory paper in Combustion Engines (bearing ME 416) for appearing wherein the petitioner had not even applied and had the respondent University declared the result of the practical examination in Automobile Engineering/Engine Emissions whenever the petitioner had taken, the petitioner would have obtained his B.E. degree in July, 2005 and the respondent University would have been left with no control over him to exercise the powers of cancellation of the result of all examinations taken by him or of expelling him from the University; (v) that the respondent University for its own mistakes cannot acquire jurisdiction to do what it

would not have had jurisdiction to do if had not erred; (vi) that the petitioner after having completed his eight semesters of B.E. course/programme in the year 2004, was in the year 2005 only appearing as an outside candidate and was no longer a regular student of the respondent University; (vii) that the powers exercised under Ordinance XV-B of cancellation of result of all the examinations taken by the petitioner and of expelling the petitioner can be exercised only over a student and the petitioner at the relevant time was not a student within the meaning of the said Ordinance; (viii) that the charge against the petitioner in the charge sheet filed by the CBI is of helping the students appearing in the entrance examination held for the year 2005 in giving correct answers with mobile phones; (ix) that the Disciplinary Committee of the respondent University had no evidence before it in this regard except the charge sheet filed by the CBI and the same, as the name suggests, merely charges and does not contain a finding of fact; and, (x) that the show cause notice issued to the petitioner in pursuance to the order dated 11th May, 2007 in W.P.(C) No.104236/2006 earlier filed by the petitioner is not in accordance therewith and the respondent University has added the charges and which it was not entitled to.

10. On enquiry, it is informed that the trial pursuant to the said charge sheet has not even commenced as yet. The counsel for the petitioner states that there are 71 persons accused thereunder including 52 students who were appearing for the examination and three erstwhile students of DCE including the petitioner and 16 public persons and the charge sheet cites as many as 150 witnesses.

11. Per contra, the counsel for the respondent University contended that the scope in such matters is limited to a judicial review of the decision making process and not of the decision. It is informed that the petitioner, as per the charge sheet, has signed the disclosure memo and the charge sheet is on the basis of statements recorded under Section 164 of the Cr.PC. It is contended that the petitioner was the kingpin of the examination paper leak and thereby disrupted the admission process held at the commencement of the academic session. Reliance is placed on *B.C. Chaturvedi Vs. Union of India* AIR 1996 SC 484, *Vikram Kumar Vs. Delhi Transport Corporation* 2015 VIII AD (Delhi) 274 and *Ex. Cont. Pawan Kumar Vs. Govt. of NCT of Delhi* MANU/DE/0992/2009.

12. The counsel for the petitioner in rejoinder contends that the petitioner was not even given an opportunity by the Disciplinary Committee to cross examine. It is further argued that the respondent University cannot treat a student as criminal and that even in criminal justice system there is concept of first offender and probation and leniency in sentence; to cancel the result of all the four years and depriving the student of his degree is the most severe extreme penalty, like a death sentence, for a student. It is contended that a first offender has to be given a light punishment so that all his future prospects and life is not spoiled. It is pleaded that the petitioner has already suffered for almost eight years during which period he could have passed the B.Tech programme twice over. Reliance is placed on (i) judgment dated 24th February, 2009 of this Court in W.P.(C) No.3720/2007 titled ***Dr. Buddh Priya Rahul Vs. University of Delhi*** where finding that there was non-compliance with principles of natural justice fair procedure and reasonableness, the action of the University was set aside; (ii) definition of the words ‘corruption’, ‘bribery’, ‘disrupt’, and ‘student’ used in Ordinance XV-B supra in the Oxford English Reference Dictionary, Black’s Law Dictionary and Oxford Advanced Learner’s Dictionary. A copy of the charge sheet was also handed over.

13. The counsel for the respondent University responded that no such right of cross examination was sought. Reliance was also placed on (i) judgment dated 26th February, 2007 of this Court in W.P.(C) No.6254/2006 titled *Prashant Vats Vs. University of Delhi*; (ii) judgment dated 4th July, 2008 of the Division Bench of this Court in LPA No.39/2007 titled *Manish Dabas Vs. University of Delhi* and in other connected petitions; and, (iii) judgment dated 19th December, 2006 titled *Pranjal Vashisht Vs. University of Delhi*. A copy of the Disclosure Memo dated 3rd August, 2005 bearing the signatures of the petitioner was also handed over.

14. I have considered the rival contentions.

15. No merit is found in the contentions of the petitioner, of not being a student at the relevant time and, of being entitled to the relief on the ground that if his result had been declared in time the University would have been unable to take action. The petitioner cannot on the one hand claim a right to take an examination and which he could do only as a student and by remaining within the domain and control of the University and on the other hand claim that he was not a student, for the University to take action against him. Similarly, the petitioner cannot be entitled to the relief on ifs and buts.

If the petitioner was aggrieved from non-declaration of his result, he should have taken appropriate remedies with respect thereto. As long as the result was not declared and the petitioner had not been conferred the degree, the petitioner remained in the domain of the University and no error can be found in the University exercising its jurisdiction against the petitioner.

16. I have perused the report of the Disciplinary Committee and the same discloses that the petitioner was given a hearing and the reply submitted by him to show cause notice was considered.

17. The Disciplinary Committee has found (i) that the petitioner in the year 2001 had indulged in an act of violence in the college campus, invited unwarranted characters in the premises of the college and mercilessly beaten up some students in the college campus and with respect to which incident an FIR No.197/2001 of PS Bawana was pending filed against the petitioner (the petitioner in his additional affidavit has stated that the said FIR was quashed on 29th May, 2009 upon a compromise being reached between the petitioner and the students whom the petitioner had assaulted); (ii) the petitioner again assaulted a student in August, 2003 and in respect of which incident the University imposed a fine of Rs.1,000/- on the petitioner and

which the petitioner had paid; (iii) that the petitioner was the main person behind the brutal beating of another person and in which respect also FIR was lodged against the petitioner (the petitioner in the additional affidavit has disclosed that the said FIR was also quashed vide order dated 4th February, 2009, again on compromise being reached by the petitioner with those he had assaulted); (iv) the petitioner along with another student had criminally assaulted the hostel attendant in April, 2004 and for which misconduct he was debarred from appearing in the 7th Semester Examination and his entry into the campus was also banned and he was suspended from working as President of the Students Union; (v) in February, 2005 the petitioner was involved in brutal beating of another student and qua which incident also FIR was lodged (the petitioner in the additional affidavit has disclosed having been acquitted in the said prosecution on 5th February, 2009 on witnesses turning hostile); (vi) that the petitioner in the paper leak case had remained incarcerated for approximately 1½ months during September/October, 2005; (vii) the signatures of the petitioner on various documents were different and the petitioner was unable to explain the same; (viii) some students had deposed before the Metropolitan Magistrate (MM) under Section 164 Cr.PC that the petitioner had called them to solve a

question bank as he had opened a new coaching institute and had conducted an examination for recruitment of teachers for the institute; (ix) parents of some of the students had also stated having paid Rs.4 lacs to the petitioner for answer key to the questions on 29th May, 2005; (x) statement of parent of another student revealed that the petitioner had asked for Rs.4 lacs to get him admitted to the college; (xi) parent of another student had also stated that the petitioner had agreed to send the answer key via SMS after 1½ hour of commencement of the exam; (xii) the petitioner had merely denied all the aforesaid without any satisfactory explanation therefor; (xiii) otherwise the stand of the petitioner before the Disciplinary Committee was that he could not be compelled to disclose his defence in the criminal case against him; and, (xiv) that the conduct of the petitioner was highly unbecoming of a student.

18. The aforesaid facts speak for themselves. The question which arises is, whether in such facts I should interfere in exercise of equitable discretionary jurisdiction under Article 226 of the Constitution of India.

19. Supreme Court in *Director (Studies) Vs. Vaibhav Singh Chauhan* (2009) 1 SCC 59 has reiterated that the High Court should not interfere with

the orders passed in educational matters by domestic tribunals set up by educational institutions, thereby interfering with the functioning of the educational institutions, unless there is a clear violation of some statutory rule or legal principle. Additionally it was emphasised that there must be strict purity in the examination of educational institutions and no sympathy or leniency should be shown to candidates who resort to unfair means in the examination.

20. The petitioner, in my view, from his conduct aforesaid of having as many as three FIRs against him prior to the FIR in the paper leak scam, is disentitled from invoking the sympathy of this Court for any relief qua him. The fact that the FIRs have been quashed or the petitioner acquitted does not come to the rescue of the petitioner as all that has happened after the FIR in the paper scam case had been registered against the petitioner and when the petitioner, perhaps as a strategy chose to compromise with those whom he had assaulted or committed offence against.

21. The petitioner in the Disclosure Memo signed by him has disclosed how he procured the question booklet, how he got it solved and how he arranged to convey the answers to the candidates taking the examination.

22. Whatsoever may be the status of the Disclosure Memo and/or the statements made by the petitioner and others before the Police/MM, as far as the disciplinary proceedings against the petitioner subject matter of this petition are concerned, the petitioner had no explanation with respect thereto. The petitioner having chosen to not participate in the disciplinary proceedings for the fear of disclosing his defence to the prosecution, cannot now be heard to allege violation of the principles of natural justice.

23. No merit is found in the petition.

Dismissed.

I refrain from imposing costs against the petitioner.

RAJIV SAHAI ENDLAW, J

JANUARY 11, 2016

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(Corrected and released on 22nd June, 2016)