

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2020
DELIVERED ON : 10.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.A.No.1033 of 2017

Meyyappan Subramanian : Appellant/Petitioner
represented by his Father,
Subramanian Meyyappan

Vs.

Sri Ramachandra University
represented by its Dean of Faculties,
Sri Ramachandra University,
Porur, Chennai - 600 116. : Respondent/Respondent

(By order, dated 07.09.2020, this Court permits the Appellant to represent through his father, namely, Subramanian Meyyappan)

PRAYER: The Writ Appeal filed under Clause 15 of Letter Patent, as against the order dated 30.06.2017 made in W.P.No.10584 of 2017.

Prayer in W.P.No. 10584 of 2017: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the respondent in Ref.FEB/M-1/2017, dated 9.3.2017 and quash the same and consequently, directing the respondent to valuate and publish the result of the examination of the Practical and Theory subject in Obstetrics and Gynecology held in February, 2017.

For Appellant : Mr.Subramanian Meyyappan
Party-in-person
For Respondent : Mr.Abishek Jenasenan

JUDGMENT

(Judgment of this Court was delivered by ABDUL QUDDHOSE, J.)

This Writ Appeal has been filed aggrieved by the order of the learned Single Judge, dated 30.06.2017 passed in

W.P.No.10584 of 2017.

2.The brief facts leading to filing of this Writ Appeal are as follows:

2.1.The Appellant was a student of MBBS at the respondent University. On 23.02.2017, while he was studying final year of his MBBS course at the respondent University, he wrote his Obstetrics and Gynaecology examination at the examination hall of the respondent University. The Invigilator of the said examination found that the Appellant was using a Smart Watch, while writing the said examination, in violation of the instructions given to the students. Since the Appellant violated the instructions by carrying a Smart Watch, the same was seized by the invigilator.

2.2.After enquiry, the Disciplinary Committee constituted by the respondent University had come to the conclusion that the Appellant had indulged in malpractice, as he was in possession of a Huawei Smart Wrist Watch during the examination, which can store materials relating to the subject examination. The Committee recommended disciplinary action in accordance with the University Examination Manual ((Appendix H) - (Part C Section III Clause 1)-S.No.7(a)) against the Appellant. Based on the recommendations of the Disciplinary Committee, the respondent/Dean of Faculties passed an order, dated 09.03.2017, cancelling the examination of the Appellant in the subject of Obstetrics and Gynaecology. Challenging the order, dated 09.03.2017, cancelling the examination of the Appellant in the subject of "Obstetrics and Gynaecology", the Appellant preferred a Writ Petition in W.P.No.10584 of 2017.

2.3.By order, dated 30.06.2017, a learned Single Judge of this Court dismissed the Writ Petition by holding that when the Appellant has openly admitted that he has brought a Smart Watch inside the examination hall, which can store materials on the subject examination, it is clear that the Appellant has adopted unfair means to write the examination with the help of a Smart Watch. Aggrieved by the order dismissing the Writ Petition, dated 30.06.2017, this Writ Appeal has been filed.

3.Heard Mr.Subramanian Meyyappan, party-in person representing the Appellant and Mr.Abishek Jenasenan, learned Counsel for the respondent.

Submissions:-

4.Mr.Subramanian Meyyappan, father of the Appellant, would submit that the report called for from Mr.G.S.Madhusudan, Principal Scientist, Computer Science Department, Indian Institute of Technology, Chennai-26, pursuant to the direction

issued by this Court on 08.12.2017, does not reveal that the Appellant had committed malpractice by misusing Smart Watch for his examination. He would also submit that the Smart Watch did not have any internet facility and no wifi facility was also available in the examination hall to enable the Appellant to misuse the same for his examination. According to him, no proper enquiry was conducted by the Disciplinary Committee constituted by the respondent University before passing the order, dated 09.03.2017, cancelling the Appellant's examination.

5. According to him, the learned Single Judge of this Court has erred in not considering the fact that the action of the respondent University in cancelling the examination of the Appellant in the absence of any findings to the effect that the Appellant has actually copied the materials from the Smart Watch, is highly arbitrary. He would also submit that the order, dated 09.03.2017, passed by the respondent University cancelling the Appellant's examination has seriously affected the career of the Appellant and a permanent stigma is attached to the Appellant. According to him, without holding proper enquiry, the order, dated 09.03.2017, has been passed by the respondent University cancelling the Appellant's examination. He has also filed written submissions on 01.12.2020, in line with the above submissions.

6. Per contra, Mr. Abishek Jenasan, learned Counsel for the respondent University would submit that the instructions given to the candidates will clearly reveal that they are prohibited from carrying any electronic devices, like that of a Smart Watch into the examination hall. He would also submit that the said instructions are contained in the hall ticket issued to the Appellant and other candidates/students, who wrote the examination. He would also submit that the same has also been pasted in the notice board of the respondent University. According to him, the Appellant was very well aware about the said instructions and has deliberately committed malpractice by carrying a Smart Watch, which can store information with regard to the subject examination.

7. He would also submit that the report, dated 23.07.2020, received from the expert, namely, Mr. G. S. Madhusudan, Principal Scientist, Computer Science Department, Indian Institute of Technology, Chennai-26, also confirms that the Smart Watch can store information relating to the examination. He would also submit that only after holding proper enquiry and after receiving a report from the Disciplinary Committee, the examination of the Appellant was cancelled by the respondent University. Further, it is contended that it is not necessary for the University to prove that the Smart Watch was used for copying in the examination by the Appellant. According to him, once it is established that Smart Watch was carried inside the

examination hall in violation of the instructions contained in the hall ticket, the Appellant is guilty of malpractice. Hence, according to him, the learned Single Judge has rightly dismissed the Writ Petition filed by the Appellant.

Discussion:-

8.It is an admitted fact that the Appellant had carried a Smart Watch inside the examination hall on 23.02.2017, when the Obstetrics and Gynaecology examination was held by the respondent University. The report of the Scientist, dated 23.09.2020, also confirms the said fact. It is also an admitted fact that the hall ticket issued to the Appellant for the said examination contains instructions to the candidates. Instructions 12 and 14 read as follows:

"12.The candidate shall not carry any written/printed matter, any paper material, electronic devices, cell phone, pen drive, ipad, programmable calculator, any unauthorized date sheet/table into the examination hall or other material which is considered objectionable and if any such items are found in his/her possession at anytime after entry into the examination hall, the candidate shall be liable for disciplinary action. There is no facility for safe keeping of these devices outside. The university will not take any responsibility if a candidate keeps any valuables inside/ out side the examination hall.

13.....

14.The candidate found guilty of using unfair means of any nature shall be liable for disciplinary action as per the provisions of the University Examination Manual."

9.As seen from the aforesaid instructions, it is clear that a student shall not carry electronic devices inside the examination hall and in case, he carries one, he shall be liable for disciplinary action. Instruction 14 also makes it clear that if a candidate is found guilty of using unfair means of any nature, he shall be liable for disciplinary action as per the respondent University Examination Manual.

10.The Appellant has himself admitted in his handwritten letter, dated 23.02.2017 to the Controller of Examination of the respondent University that he was in possession of a Smart Watch, while writing the examination on 23.02.2017. Enquiry was also conducted by the Disciplinary Committee of the respondent University comprising of (a)Dr.S.Anandan (Dean of Medical College), (b)Dr.R.Jothi Malar (Senior Professor in Medical College), (c)Dr.Jaya Vijayaraghavan (Prof-Obstetrics & Gynaecology) and (d)Dr.K.Balaji Singh (Dean-Students).

11.The members of the Committee by their unanimous decision, held that the Appellant has indulged in malpractice by possessing a Huawei Smart Wrist Watch during the examination

held on 23.02.2017. The Disciplinary Committee recommended disciplinary action against the Appellant in accordance with the University Examination Manual ((Appendix H) - (Part C Section III Clause 1)-S.No.7(a)). Only based on the report of the Disciplinary Committee, dated 27.02.2017, the order, dated 09.03.2017 was passed by the respondent University cancelling the examination of the Appellant.

12.The report received from Mr.G.S.Madhusudan, Principal Scientist, Computer Science Department, Indian Institute of Technology, Chennai-26, pursuant to the direction issued by this Court on 08.12.2017, also confirms that the Smart Watch carried by the Appellant into the examination hall can store information relating to the examination. The report, dated 23.09.2020, reads as follows:

"1.A copy of the report from Ramachandra Medical College was handed to me, including affidavits from all the parties. The said smarthwatch in question bearing the serial No. mentioned in the report was also provided to me.

2.The fact that the student in question brought a smartwatch into the exam hall in violation of the rules is not in question. The student has testified to that effect.

3.Upon examination I found that the smartwatch in question did have the documents load into it as claimed by Ramachandra Medical College. But since the files do not have time date and the watch was not in a controlled custody, it cannot be determined as to whether the files were loaded on the watch before the watch was seized or after the watch was seized."

13.Though the said report does not confirm whether the Appellant had used the Smart Watch to get answers for the examination questions, the Appellant is guilty of malpractice since the instructions in hall ticket issued to him clearly prohibit carrying any electronic devices into the examination hall. The Smart Watch is also an electronic device, which can store materials on the subject examination. The report of the Scientist, dated 23.09.2020, also reveals that the Smart Watch seized from the Appellant stored materials pertaining to the subject examination written by the Appellant. The Disciplinary Committee report also reveals that before the commencement of examination, at 09.55 am., an announcement was made by the Chief Superintendent over the mike that electronic devices should not be carried by the candidates inside the examination hall. Despite the said instruction, the Appellant has carried the Smart Watch inside the examination hall. It is not required to establish that the Smart Watch was used by the Appellant for getting answers to the questions raised in the subject examination written by him. Once it is established by the

respondent University that the Smart Watch was carried by the Appellant into the examination hall in violation of the instructions, it is proved that the Appellant has committed malpractice. It is immaterial whether there was wifi facility in the examination hall or the Smart Watch had any internet connection during the time of the examination. Once the candidate has taken the Smart Watch inside the examination hall in violation of the instructions given to candidates, malpractice is proved.

14.The Honourable Supreme Court in the case of Controller of Examination and others vs G.S.Sunder and another, reported in 1993 Supp (3) SCC 82, held that in matter of enforcement of discipline by educational authorities, the Courts must adopt cautious approach in enforcement. The relevant paragraph of the said judgment is referred to hereunder:

"10.We have given our careful consideration to the above submissions. One thing must be put beyond doubt, in matters of enforcement of discipline this Court must be very slow in interference. After all, the authorities in charge of education whose duty it is to conduct examinations fairly and properly, know best how to deal with situations of this character. One cannot import fine principles of law and weigh the same in golden scales. In the present system of education, the system of examinations is the best suited to assess the progress of the student so long as they are fairly conducted. Interference by court in every case may lead to unhappy results making the system of examination a farce. For instance, we cannot but strongly condemn copying in the examination which has grown into canker of mass copying. Such unhealthy practices which are like poisonous weeds in the field of education must be rooted out in order that the innocent and the intelligent students are not affected. We feel that;

"The hour has come when we must clear
The educational fields from poison and from fear;
We must remould our standards -build them higher,
And clear the air as though by cleansing fire,
Weed out the damning traitors to education,
Restore her to her ancient place of awe."

15.The Honourable Supreme Court in the case of Director (Studies), Dr.Ambedkar Institute of Hotel Management, Nutrition and Caterring Technology, Chandigarh and others vs Vaibhav Singh Chauhan, reported in (2009) 1 SCC 59, involving a similar issue, held that when a candidate carried a slip of paper containing materials pertaining to the examination in question, it is immaterial that the respondent therein was not found to have

used the piece of paper. The Honourable Supreme Court in the aforesaid decision, held as follows:

"All that is relevant is whether the slip of paper found in the possession of examinee pertained to the examination paper in question. If it does then it is a malpractice. In this particular case, the said slip of paper was brought into the examination hall and was found to be in the possession of the examinee while the examination was going on. Whether the respondent actually used that slip or not is irrelevant. The slip of paper contained material pertaining to the examination in question and therefore it is immaterial that the respondent was not found to have used the piece of paper. It is true that seeing a slip of paper before commencement of the examination is not a malpractice, but the present case is regarding its use during the examination and not before the examination."

16. In another decision of Honourable Supreme Court in the case of *Nidhi Kaim vs State of Madhya Pradesh and others*, reported in (2016) 7 SCC 615, the Honourable Supreme Court held that if there is reliable information that students resorted to unfair means in large scale at an examination, the examination body can taken action without any formal complaint and in the absence of direct evidence, circumstantial evidence can be relied on. The Honourable Supreme Court further held that the Court does not have any technical expertise to interfere with the decision of expert committee and the Court should not act as an appellate Court over the decision of examination body/expert body.

17. In the case on hand, it is an admitted fact that the Appellant had carried a Smart Watch, which can store information relating to the examination in question. It is also an admitted fact that clear instructions were given in the hall ticket issued to the Appellant that he should not carry any electronic devices into the examination hall. It is also admitted fact that the Appellant was in possession of a Smart Watch, while writing his examination on 23.02.2017. The report of the expert, namely, Mr.G.S.Madhusudan, Principal Scientist, Computer Science Department, Indian Institute of Technology, Chennai-26, also confirms that the Smart Watch carried by the Appellant inside the examination hall can store informations with regard to the examination in question.

18. The aforesaid decisions of the Honourable Supreme Court are squarely applicable to the facts of the instant case. It is not necessary that there must be evidence to show that the Appellant had misused the Smart Watch for the purpose of getting answers to the questions raised in the subject examination. The order, dated 09.03.2017 cancelling the Appellant's examination

on account of the fact that the Appellant possessed a Smart Watch while writing his examination on 23.02.2017 is perfectly a correct order, as the Appellant has admittedly violated the instructions given to him in the hall ticket issued by the respondent University.

19.The Appellant was doing his final year MBBS course, when the incident had happened and therefore, he cannot feign innocence, when the instructions contained in the hall ticket clearly prohibits him from carrying any electronic devices into the examination hall. After having given due consideration to the nature of examination, we are of the considered view that the learned Single Judge was right in dismissing the Writ Petition and we find no merit in this Writ Appeal.

20.We understand the anguish of the Appellant as well as his parents, as a result of the order, dated 09.03.2017 cancelling the Appellant's examination. Any human being is bound to commit mistakes in life. In the case on hand, the Appellant has committed a serious mistake by carrying a Smart Watch into the examination hall, for which he has been adequately reprimanded. When his examination was cancelled, he was studying his fifth year MBBS course and now it is learnt that he has completed the MBBS course and has now become a qualified Doctor. To err is human and forgive is divine. Having been adequately reprimanded, we are sure the respondent University would have forgiven the past act of the Appellant. We are also sure that the Appellant would have also realised his past mistake. Therefore, we do not see any continuing stigma on the Appellant or his parents, that too when he has already completed his MBBS course and has now become a qualified Doctor. As a passing reference, we wish the Appellant and his parents the very best in life.

21.In the result, this Writ Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cmr

To

1. Dean of Faculties,
Sri Ramachandra University,
Porur, Chennai 116

+2 cc to Mr. Abishek Jenasenan, Advocate. SR 40485

Pre-Delivery Judgment made in
W.A.No.1033 of 2017

NMI (CO)
NS (28/12/2020)



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