

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(2 connected cases)

Reserved on : 23.01.2024.
Date of Decision : 12.02.2024.

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(1) CWP-26176-2023 (O&M)

SHIVYA SARIN
...Petitioner(s)

Versus

PANJAB UNIVERSITY, CHANDIGARH AND OTHERS
...Respondent(s)

(2) CWP-27457-2023 (O&M)

SHIVYA SARIN
...Petitioner(s)

Versus

PANJAB UNIVERSITY, CHANDIGARH AND OTHERS
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

ARGUED BY:

Dr. Payal Mehta, Advocate, and
Mr. Gaurav Saini, Advocate,
for the petitioner.

Mr. Arun Kumar Bakshi, Advocate,
for the respondents.

VINOD S. BHARDWAJ. J.

Both these writ petitions are being decided by a common judgment since common issues arises therein. For the facility of reference, facts are being referred from CWP-26176-2023, titled as 'Shivya Sarin Vs. Panjab University, Chandigarh and others.'

FACTS

The order 14.08.2023 (Annexure P-1) passed by the Assistant Registrar, UMC Branch, Panjab University, holding the petitioner guilty of using unfair means in University examination and consequently disqualifying her from appearing in any examination of the respondent-University for a period of two (02) years (Four Exams) is a subject matter of challenge in the present writ petition along with order dated 09.10.2023 whereby the review application filed by the petitioner against the above mentioned dated 14.08.2023 has also been dismissed. A further direction has also been sought by the petitioner for grant of permission to attend her classes and to submit assessments along with completing her backlog examinations.

As per the averments raised in the petition, the petitioner, who is a student of 5th Semester – B.Com LLB with University Institute of Legal Studies (hereinafter referred to as ‘UILS) Panjab University, had cleared her entrance examination for admission to the respondent-University in her first attempt. The petitioner remained a meritorious student throughout her school days having secured more than 95% marks in both, 10th and 10+2 classes. The parents of the petitioner are also highly qualified and her mother is holding a Doctorate Degree.

It is further averred that the petitioner had an unblemished student life having been the Head Girl in her school and had been bringing laurels to her Institution and was also an active participant in sports, debates and extra-curricular activities.

The petitioner represented her school in Basketball at National and State Level Competitions without being indicted or having been imputed any incident of using unfair means in her studies. The petitioner had appeared in B.Com-4th Semester Functional Management Exam at UILS of the respondent-University on 15.05.2023. It is further averred that before commencement of the examination, at about 9:15 A.M. when the petitioner entered the classroom, her own study notes that were in her pocket were left by her petitioner on the table of the Invigilator along with other belongings such as wallets, cardboards and pencil boxes etc. Thereafter, on completing her examination, she submitted her answer sheet about 1-2 minutes prior to the ringing of the final bell and collected her belongings from the table of the Invigilator

including her notes. Subsequently, when she was walking out of classroom, she was stopped by the Invigilator who alleged that he had seen the petitioner keeping some papers in her pocket and asked the petitioner to show him the same. She informed the Invigilator namely Dr. Purshottam that these notes were prepared by her for refreshing her memory which were left by her on the table of the Invigilator during the said examination.

Disregarding the said submissions of the petitioner, the Invigilator directed the petitioner to accompany him to the Moot Court Room situated in UILS premises to offer her explanation. There was no other teacher or Invigilator present at that point of time. Upon reaching the Moot Court Room, the Invigilator accused the petitioner of possessing notes during her attempt at the examination and a case of unfair means was made against the petitioner. It is further averred that the CCTV cameras were installed in the Moot Court Room as well as in the classroom where the examination is conducted and the entire incident ought to have been recorded and preserved by the respondent-University to establish or to substantiate the allegations leveled about the incident.

No such primary evidence was, however, either adduced or used to confront the petitioner during the course of enquiry, rather, the entire exercise was undertaken in a partisan and unilateral manner with a pre-determined conclusion and without providing any fair and impartial hearing. During the entire process, the petitioner was treated with

disdain and humiliation. She was directed to remain quiet and silently write down whatever was being told to her failing which she would be extended a harsher punishment including that of a permanent expulsion from the respondent-University. Under such compelling circumstances coupled with a fragile mental frame, perpetrated from a personal loss of great grandmother some days prior to the exam, the petitioner succumbed to the pressure and was compelled to write “I have copied” below her signatures in her previous statement.

The petitioner was thereafter, given a fresh answer booklet and made to write her details; sign and then submit the same as her examination answer sheet for the given examination. No copy of the statement, forms, documents and report of UMC case were however supplied to her.

Subsequently, on 28.06.2023, the petitioner was again called upon by the Administrative Staff to get her statement recorded. She was again made to write her statement and sign the said statement as dictated by the officials including her confession that she was in possession of the chits during the examinations. The petitioner informed about the undue pressure being exerted on her by the officials and made a call to her mother and narrated the entire incident who intervened in the matter whereupon, the petitioner was made to write a third statement and the administrative staff informed that it is just a formality and convinced her that it is a better course to admit and apologize so that a student is let off leniently, failing which the consequences will be

harsher. Unaware of the procedures, the petitioner believed the assurances and the information furnished by the employees of the respondent-University.

On 07.08.2023, the petitioner appeared before the Standing Committee and specifically mentioned that she was not in possession of any chits in her pocket at the time when she attempted her examination and that the case has been set up against the petitioner for use of unfair means after she had already written her examination and submitted the answer-sheets. She further requested the Standing Committee to verify her claim from the CCTV cameras installed in the classroom and examine the relevant footage. It was informed by the Committee members that they shall be calling the camera recordings from the classroom and she will be called again for confrontation about the camera recordings, after evaluation thereof. However, the petitioner was never called for any further hearing or proceedings, and received the impugned order dated 14.08.2023 on 18.08.2023 imposing the above said punishment of disqualification of the petitioner from appearing in any examination of the respondent-University for two years (four exams).

That on receipt of the said order, a review application was filed by the petitioner to the Vice Chancellor on 12.09.2023, however, no communication, in this regard, was received from the office of the Vice Chancellor except for the impugned order dated 09.10.2023 which was received informing her that the request for review of the decision has not been acceded to by the competent authority. The petitioner had

also submitted an application to the respondents on 18.08.2023 to be permitted to participate in her classes and submit her assignments, subject to final outcome of the dispute, however, no communication was received from the respondent-University. A subsequent application after receipt of the review order, was also submitted by the petitioner on 13.10.2023 but receiving no response, the instant writ petition was filed.

During pendency of the above writ petition, the respondents passed a fresh order on the subsequent application submitted by the petitioner, vide their order dated 30.11.2023. The above said communication is the subject matter of challenge in the second writ petition i.e. CWP-27457-2023.

RESPONSE OF THE RESPONDENTS

A reply had been filed by the Respondent-University wherein it has been averred that the Hon'ble High Court does not sit as a Court of appeal against the decision taken by the competent authority or evaluate the evidence to come to its own conclusions and supplant the same for the conclusions drawn by the competent authority.

It is averred that a speaking, detailed and well reasoned order/resolutions had been passed by the competent authority while deciding the Unfair Means Case (UMC) of the petitioner and that the impugned letters are just the communications of the outcome and not the speaking orders.

While the factual aspects asserted above were not disputed, it is averred that the Invigilator had made a public announcement before

the start of the examination to hand over all the incriminating material, if any, in possession of any student. A second public announcement was also made by the Centre Superintendent, Professor Navneet Arora as well as the Deputy Superintendent Rita. The activities of the petitioner were however found to be suspicious, during the invigilation of the examination room, and she was noticed taking out slips from her pocket at around 12:28 P.M. On checking, more hand written slips were found from her. Thus a new answer sheet was given to the petitioner as per the Rules, however, as the examination time was over at 12:30 P.M. by the time she was filing the OMR, the sheet was taken back from her. The case of use of unfair means was made by the Centre Superintendent after confiscating the petitioner's handwritten material i.e. 08 notes that were annexed as R-1. The statement of the petitioner in her own hand writing was also recorded at the examination centre which reads thus:-

"On 15th May 2023, I was caught with cheating material in my Functional Management exam. I sincerely apologize carrying and using such material in the exam. I have never previously carried any material for cheating in my exams. My grandmother passed away 5 days ago and I was unable to cope with the same due to which I resorted to carrying such material when I was unable to study for my exam. I wasn't aware missing the exam was an option, I could take in this case. I am sincerely apologetic about my behavior and shall make sure I do not repeat such action in the future. I request you to understand that I was compelled by my situation and in a free mind, I would not have done anything such. Kindly consider my statement and let me write my exam again in my next semester. I apologize once

again for what I've done. Please be less harsh with my punishment and I shall make ~ good of my actions. I sincerely am sorry. Kindly forgive me. I was carrying chits which I took out from my pocket, put them on my clipboard and used them in attempting my exam.”

The petitioner was thereafter summoned to the University office, after three months and in the questionnaire form filled by her, response to some of the relevant questions is extracted as under:-

“Question no.4 of this questionnaire form is answered by petitioner as:

"The material were my own class notes of all subjects, it was by mistake that they remained in my pocket. I wasn't aware that they were in my pocket even as I had no intention of carrying any objectionable material nor any intention of cheating.”

Question no.8 of this questionnaire form is answered by petitioner as:

"The papers recovered from me were my own class notes of all the subjects. It was by mistake that they remained in my pocket while I was revising in the car before my exam".

Question no.9 (ii) of this questionnaire form (Is it a fact that you refused to sign the incriminating material recovered from you?) is answered by petitioner as:

"I signed the same

Question no.9 (iii) of this questionnaire form is answered by petitioner as:

"I accepted the 2nd answer booklet when it was given to me around 1 pm or pm 1.15 pm."

Question no. 12 of this questionnaire form is finished by petitioner as

"..... It remained in my pocket by mistake".

Question no. 14 of this questionnaire form is answered by petitioner as:

".....my own class notes remained in my pocket by mistake....."

Question no.16 of this questionnaire form is answered by petitioner as:

"It was by mistake that my own class notes of all subjects that..... prepared remained in my pocket"

It is contended that false allegations and frivolous claims have been raised by the petitioner in her review/appeal in violation of her own confession/handwritten admissions. Still, the UMC committee requested the Director of UILS to verify the claim raised by the petitioner in her review application whereupon the comments of the Assistant Superintendent to Deputy Superintendent and the Central Superintendent were supplied on 10.08.2023. The relevant part of the same is extracted as under:-

"Four handwritten (8 pages) of incriminating material which were recovered from the candidate during the examination. The candidate had attempted the questions

from the recovered incriminating material at pages 2 to 5, 7 to 10, 18 to 23 of the Answer book offered to her in the examination. The candidate had given false statement by saying that there were CCTV cameras in the Examination hall but whereas according to the email reply of the Director UILS, P.U. Chandigarh, there are no cameras installed in the class room/examination hall of the said Centre. Further more, UILS has video recording for last 25 days only.

Therefore, the above examinee Shivya Sarin is found guilty. The committee unanimously decided to disqualify her from appearing in any University examination for two years (Four Exams) including that in which she is found guilty Le May/June 2023 to Nov/Dec 2024 under Regulation 5 (a) and 8 appearing at pages 10-14 of PU Cal. Vol. II, 2007."

It is further averred that various unsubstantiated allegations were levelled by the petitioner in her appeal/review dated 12.09.2023. Nonetheless, the UMC Branch requested the Director UILS to respond to the said claim. The comments of the Invigilation Staff was supplied along with communication dated 26.09.2023.

“Relevant portion of replies/ statements dt. 26.09.2023 of Assistant Superintendent (Invigilator) Dr. Purushottam (Annexure P-8) is reproduced here-under for ready reference:-

"2. That the Appellant has concocted a false story in the present review/appeal. That on the day of the incidence, ie.15.05.2023, I was on Examination duty (as Assistant

Superintendent). Before starting of the Examination, I made a public announcement regarding handing over the incriminating material, if there is any, in possession of any student. Again, after the commencement of the Examination, same public announcement was made by Centre Superintendent and Deputy Superintendent. While invigilating the Examination room, appellant/student's activity was found suspicious as she was taking out slips from her pocket around 12.28 pm. And after checking, more handwritten slips were found on her clip board, which she was using. Deputy Superintendent was informed regarding the incident. A new answer sheet was given to her. But by the time she was filling the OMR time got over (12.30) and the sheet was taken back from her. An UMC case was made against her by the Centre Superintendent."

Deputy Superintendent Dr. Rita's hand-written Statement dt.25.09.2023 (Annexure P-8) is reproduced as under for the ready reference of this Hon'ble Court:-

"This is with reference to review appeal of Ms Shivya Sarin B.Com. LL.B (Hons) 4 Semester Examination May/June 2023 regarding UMC case. I Dr Rita was the Deputy Superintendent of the Examination. The invigilator Le Dr Purushottam has informed me about the case and its process was completed as per Panjab University Rules".

Relevant portion of the statement dt.22.09.2023 of the Centre Superintendent Professor Navneet Arora (Annexure

P-8) is reproduced as under for the ready reference of this

Hon'ble Court:-

“The undersigned being the Centre Superintendent at that time (May/June 2023, Morning session), want to submit that the UMC case has been brought to me by the invigilator Dr Purushottam. The case was processed by me being the Centre Superintendent as per PU rules.”

A decision was thereafter taken by the competent authority on the said review application, by passing a detailed speaking and reasoned order. The relevant extract thereof reads as under:-

“Candidate Ms Shivya Sarin D/o Sh Sanjay Sarin is trying to distort the facts by changing her statement in the Examination Centre and in the review application. In this case applicability of Regulation 5(a) appearing at page 10-14 of PU Vol. II 2007 holds precedence over Regulation 4. Candidate Ms Shivya Sarin had already been admitted in the Examination Hall in front of the members on duty about her willful intention and mala fide indulgence in the act of cheating. Thus the Committee members unanimously found that no ground of any inadvertence at the decision taken in its meeting dt. 10.08.2023 regarding disqualifying her from appearing in any University Examination for two years (four examinations) including that in which she is found guilty Le May/June 2023 to Nov/Dec 2024 under the provisions of Regulation 5(a) appearing at page 10-14 of PU Vol. II 2007 is applicable. Therefore the Committee members concordantly decided in its meeting held on 29.11.2023, that the decision for the said candidate remains the same which was given on 10.08.2023 as no new

evidence and facts were seen by the Committee members on 29.11.2023."

It is thus contended that the petitioner admitted herself to be in possession of the incriminating material during examinations, in her statement, however, on 07.08.2023, while appearing before the UILS Standing Committee, she denied using any unfair means and sought verification from the cameras installed in the examination hall which on verification were found to be false claim.

It is thus averred that in view of the said factual aspect, there is no fault in the decision of the competent authority and the punishment has rightly been imposed, in terms of the applicable regulations.

ARGUMENTS ON BEHALF OF THE PETITIONER

Learned counsel for the petitioner has argued that the impugned orders have been passed by an incompetent authority. The orders in question have been passed by the Assistant Registrar whereas only the Standing Committee is authorized to pass such orders. It is further argued that the orders communicated to the petitioner are non-speaking and the petitioner has been accused and punished without even examining the evidence and the circumstances pointed out by her.

The counsel of the petitioner contends that the petitioner was made to write and sign the statements, under pressure, and as directed by the invigilator. Under the fear of strict punishment being

imposed upon her, if she did not write as called upon to do, she wrote down as dictated to her by the authorities. It is further contended that the petitioner is not liable to be charged and punished as per provisions of Regulation 5 (a) and 8 of the Chapter II – Punishment for use of unfair means, Panjab University, Calender, Volume-II, 2007. The relevant regulation relied upon by the learned counsel are extracted as under:-

4. If during a University examination a candidate is found having in his possession or accessible to him papers, books or notes due to inadvertence but which papers, books or notes could be of assistance to him he may be debarred from passing in that paper as a disciplinary measure.

5. If during a University examination, a candidate is found in malafide possession of any material such as - (a) Paper, books or notes; or (b) Written notes on any part of the clothes worn by the candidate or on any part of his body, or table or desk; or (c) Foot-rule and/or instruments like set-squares, protractors, slide rules, etc., with notes written on them; which is relevant to the subject of the examination, he shall be disqualified from appearing in any University examination for two years, including that in which he is found guilty, if he is a candidate for an examination held once a year, or for four examinations, including that in which he is found guilty, if he is a candidate for an examination held twice a year.

xxx xxx xxx

8. If during a University examination a candidate is found having copied or indulging in copying from any paper, book or notes or if he has allowed or is found allowing any other candidate to copy any matter from his answer book or to have in any manner rendered any assistance to another

candidate in solving a question or a part of question set in the question paper or if he is found to have been rendered assistance in solving a question or a part of question set in the question paper, he shall be disqualified for a period of two years, including that in which he is found guilty if he is a candidate for an examination held once a year, or for four examinations, including that in which he is found guilty, if he is a candidate for an examination held twice a year.”

It is argued that for imposing punishment for use of unfair means, it is necessary for the University to record a finding that a candidate was in “possession of the material during the examination.” The petitioner was never found to be using any unfair means during the examination and it was only after the examination had concluded that the respondent set up the above said case. Hence, the said punishment could not have been imposed.

It is further contended that the respondent-University did not afford adequate opportunity to the petitioner and had never referred to the CCTV camera recordings. Even though it is stated in the reply that a report had been sought from the Director of the UILS as regards the CCTV footage to which the director replied that there is no such cameras installed, however, had an opportunity been extended to the petitioner, she would have established that the above said stand of the respondent-University was incorrect.

An information had been sought by the petitioner from the office of the Director of UILS under the Right To Information Act, 2005 and she demanded that the video clips to be supplied to her in a pen

drive. In response to the above said information, the respondent UIIS informed that there are 29 cameras CCTV installed in the UIIS premises and that the said CCTV cameras were in working condition in the month of May 2023 and no complaint regarding non-functioning of any camera/DVR has been received. It was also informed that as the recording capacity of the DVR was 25 days hence, the information pertaining to 15.05.2023 could not be made available. She also appended the photographs of the CCTV cameras installed in the classroom and also the photographs depicting subsequent removal thereof to contend that the respondent-University facilitated destroying of the evidence which could have established her innocence and could have saved her from suffering the humiliation and incarceration which is stigmatic on her entire outstanding academic record.

The learned counsel for the petitioner further argued that the respondents never dealt with the issues raised and chose to stick to their own story. No opportunity of hearing was even granted to the petitioner at the time of deciding the appeal and only a final decision had been conveyed. Beside this, the respondents themselves acknowledged that the unfair use of the material was detected at 12:28. They have, however, chosen not to make a reference to the specific stand of the petitioner that she had left her hand written notes along with other material in her possession on the table of the invigilator, before going for attempting her examination, and while leaving the classroom, after handing over her answer sheet, she had been roped in the above said case.

It is also argued that once respondent-University had installed cameras in the classroom, where the examination was being conducted, there is no reason as to why such unimpeachable evidence ought not to have been preserved for proving the allegations against any student. The counsel for the petitioner contends that the entire process for conducting the enquiry had been carried out with a pre-determined motive and that the statement of the petitioner and her answer to the questionnaire were also not considered. She contends that the petitioner specifically mentioned that she gave the statement as told by the respondent authorities and stated whatever she had been asked to write and to say that she was using the material recovered from her. A reference in this regard is also made to document Annexure P-10 which is the questionnaire given to the petitioner.

Learned counsel for the petitioner has argued that the columns of questionnaire had been left blank and the petitioner had been asked to write her answers, without even disclosing about the material that the respondents was required to rely to. An argument is thus made that the Enquiry Committee never afforded a fair and impartial opportunity to the petitioner and that she was made to write her statements on blank answers, without confronting her with the alleged incriminating material and even without filling up the blank/details in the questionnaire. The petitioner specifically denied in response to various questions that she did not commit any cheating or made use of any incriminating material during the examination and had not copied any answers.

She also placed reliance on certain precedent judgments. Reference is made to the judgment in the matter of **Dev Sehgal Vs. Panjab University, Chandigarh and others, passed in CWP-15471-2023 decided on 06.09.2023**, wherein it is held that the competent authority has to pass a reasoned order even though the same may not be very elaborate. A similar decision imposing a punishment of disqualifying the petitioner therein from appearing in any University Examination for a period of two years was set aside by this Court. The relevant extract of the said judgment reads thus:-

28. This Court is aware that the respondent-university at the time of considering the case of a candidate with respect to unfair means is not required to give any elaborate reasons for passing the order of punishment to the candidate, but is at least required to briefly state the facts of the case and the reasons more so, when the matter has been referred by the Vice Chancellor to the Committee for reconsideration and communicate the same to the candidate so as to indicate that the Committee has applied its mind to the grounds raised by the candidate. In the present case, after the Vice Chancellor had placed the matter before the Committee for reconsideration, the only communication/letter/order issued to the petitioner is Annexure P13 dated 09.06.2023 and a perusal of the same would show that none of the grounds/pleas raised by the petitioner in his grounds of appeal/representation have been considered by the respondent authorities. Regulation 5 has been invoked without there being any observation that the petitioner was found to be in “malafide possession” of material which was relevant for the subject of the examination. The question as to whether Regulation 4 or Regulation 5 would apply in the

present case has also not been considered although, in case the pleas taken in the grounds of appeal are taken to be correct then in the prima facie opinion of this Court, Regulation 4 would apply. The said aspects were required to be considered by the respondent authorities which have not been considered in the present case. This Court is aware that the Court in its writ jurisdiction under Articles 226/227 of the Constitution of India is not to act as a Court of appeal and to substitute the opinion of the authority by giving its own opinion on merits, thus, keeping in view the facts and circumstances of the present case, the ends of justice would be met in case communication/letter/order dated 09.06.2023 (Annexure P-13) is set aside and the respondent authorities are directed to reconsider the matter after taking into consideration the observations made in this order. Accordingly, the present writ petition is partly allowed and the order/communication dated 09.06.2023 is set aside and the respondent authorities are directed to reconsider the matter in light of the observations made in this order as expeditiously as possible preferably within a period of three weeks from the date of receipt of certified copy of the present order.

A reference is also made to the judgment passed by this Court in the matter of **Balwinder Kaur Vs. Panjab University, Chandigarh, CWP-1669-2013 decided on 14.05.2013,** which reads thus:-

“Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion

that the impugned orders passed by the respondent University are cryptic and non speaking orders on the face of it. That the punishment order dated 08.08.2012 (Annexure P-3) reads as under:-

“The unfairmeans case against you have been decided and you have been disqualified from appearing in any University Examination for a period of Two years i.e. April/May, 2012 to Sept./Oct. (Four Exams.) under Regulations/s 5 appearing at page/s 10 of the Panjab University Calendar, Volume-II, 2007.”

Similarly, impugned appellate order is non-speaking and the same reads as under:-

“Reference her appeal to the Vice Chancellor dated 23.11.2012. This is informed that her appeal has not been accepted to and the earlier decision which has been conveyed to her vide letter No. 1197/UMC dated 08.08.2012 would stand.”

It has come on record that at the time of dismissing the appeal of the petitioner, she was granted no opportunity of being heard. Again, while passing the order dated 04.04.2013(Annexure R/1), no opportunity of being heard was granted to the petitioner. Thus, admittedly the impugned appellate order dated 03.12.2012 (Annexure P-5) as well as order dated 04.04.2013 (Annexure R/1) are ex parte orders, without hearing the petitioner. The operative part of the order dated 04.04.2013 reads as under:-

“The petitioner has not brought any new facts in the belated and non-maintainable appeal filed by her. The unanimous decision of the UMC Committee which was passed after

giving proper opportunity of hearing to the petitioner is justified in the facts mentioned above and it does not call for any interference.”

A bare reading of the above said order would show that even on reconsideration, the Vice Chancellor of the respondent-University has failed to record any cogent reasons while passing the above said order dated 04.04.2013. Further, no reason is coming forth as to why the petitioner was not granted an opportunity of being heard before passing the orders against her. As aptly said, reason is the soul of the decision. However, in the present case, none of the orders passed by respondent-authorities has been found to be supported with reasons. Further, the impugned order, appellate order and also order dated 04.04.2013 are ex parte orders. Having said, this Court feels no hesitation to conclude that the impugned orders cannot be sustained.

In the present case, the basic rule of natural justice has been violated. Principle of audi alteram partem also stood violated. In this view of the matter, it is unhesitatingly held that the impugned orders are neither just nor reasonable and the same cannot be sustained.”

She argued that when a chance of fair hearing has not been granted or enquiry has not been proper or where the candidate is not provided with the charge or documents to defend herself, such an order is liable to be set aside since the principles of natural justice are applicable to administrative enquiries as well, as per the Constitution Bench Judgment of the Hon’ble Supreme Court in the matter of **A.K.**

Kraipak and others Vs. Union of India and others, reported as 1969 (2)

SCC 262. The mandate of complying with the principles of natural justice, while dealing with the cases of examinees using unfair means was emphasized by the Hon'ble Supreme Court in the matter of the **Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and others, reported as 1962 AIR (Supreme Court) 1110.**

Further, a Division Bench of this Court in **LPA-1707-2023, titled as Shivam Tanwr and others Vs. State of Haryana and others, decided on 15.11.2023,** has set aside an order imposing punishment and cancelling the entire MBBS first professional examination on use of unfair means when a reasonable opportunity had not been granted to the examinees and principles of natural justice had not been followed and noticing that the University had not assigned any reasons for recording a finding. The relevant extract of the said judgment reads thus:-

“17. In view of the above, we unhesitantly conclude that before cancellation of their entire MBBS Ist Professional Examination the appellants were not granted reasonable opportunity to defend themselves which violates not only Clause 7 of Ordinance 4 of the University's Calendar but also the rule of audi alteram partem.

18. The impugned decisions of the University are also flawed for being bereft of any reason. In fact the decision of the University to cancel the appellants' examination is in the form of a declaration. The orders of the University which have been impugned by the appellants would affect them for their entire academic life. Non-supplying of reasons for such decisions is legally unacceptable. After the order regarding

cancellation of their examination had been conveyed to the appellants they filed an application for reconsideration of the said order by the UMC Committee. Their application contained several grounds. The UMC Committee rejected the appellants' application but without even touching any of the grounds raised by the appellants."

Reference was also made to a full Bench Judgment of this Court in the matter of **Ramesh Kapur Vs. The Panjab University and others, reported as 1965 AIR 1965 (P&H) 120** wherein it was held that failure of the University in providing evidence to the candidate relied against him for calling his explanation against the said material would be violative of principles of natural justice rendering the punishment liable to be set aside.

Reference was also made to certain other judgments by different High Courts to corroborate her arguments, however, the same are not required to be reiterated.

ARGUMENTS ON BEHALF OF THE RESPONDENT-UNIVERSITY

Controverting the arguments of the petitioner, learned counsel for the University has, however, referred to the extract of the statements that had already been reproduced above and contended that the admission by the petitioner substantiates the case against her and that there was no occasion for travelling any further. He refers to the notes that were recovered from the possession of the petitioner as well as the report submitted by the invigilator. It is noticed in the above said report

that the invigilator noticed the hand written slips at around 12:28 that had been put on her clipboard. It is also specifically admitted that the examination time came to an end at 12:30. It is further argued by the counsel for the respondent-University that the petitioner submitted in her own hand writing that she could not prepare for the exam as her grandmother had passed away three days prior to the examination and that she had brought the material with her and apologized for such conduct under those compelling circumstances.

He further contends that even though Annexure P-10 appended with the present petition relates to the questionnaire written by the petitioner, however, the same is not a correct copy and that Annexure R-4 is the complete copy of the questionnaire given to the petitioner wherein all the column required to be filled by the University are actually filled up. Hence, all the incriminating material had been shown to her and after going through the same, she had given her answers. Reference is also made to the minutes of meeting, held on 07.08.2023, of the UMC Standing Committee wherein the information was sought from the Director of UILS and report was reconsidered in the meeting held on 10.08.2023. A finding was recorded that there were no cameras installed in the classrooms and there is no video recording beyond 25 days and punishment was accordingly imposed upon the petitioner after noticing all the contentions. Reliance was also placed on the statements of the remaining staff posted there.

He also refers to the judgment of the Hon'ble Supreme Court in the matter of **Guru Nanak Dev University and another Vs.**

Harjinder Singh and another, reported as AIR 1994 Supreme Court, 2591, wherein the decision of the Standing Committee to debar a candidate from appearing in any University examination for a period of two years was upheld and the judgment of the Punjab and Haryana High Court passed in CWP-2450-1992 decided on 21.05.1992 was reversed. A further reliance was placed on the judgment of the Hon'ble Supreme Court in the matter of **Maharashtra State Board of Secondary and Higher Education Vs. K.S Gandhi, reported as 1991 (2) Service Cases Today, 611**, to contend that only the Standing Committee is competent to conduct enquiry into the unfair means and that when a student has admitted the fact of fabrication to his/her advantage, it is not necessary to reproduce all the admissions in the enquiry report and record reasons in support of his conclusions.

No other argument has been raised before this Court.

I have heard the learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petitions with their able assistance.

The University Calendar under Chapter II, deals with the '**Punishment for use of Unfair Means.**' The said Chapter specifically contains a clause that merely because a candidate has been found, having in his possession or accessible to him papers, books or note due to inadvertence but which papers, books or notes could be of any assistance to him, he may be debarred from passing in that paper as a disciplinary measure and where the candidate is found in mala fide

possession of any such material during an examination, he may be disqualified from appearing in a any University Examination for a period of 02 years including that in which he is found guilty. Hence, the University Calendar contemplates both eventualities i.e. an eventuality where a material may left in the pockets or be in possession of an examinee due to inadvertence as well as an eventuality where a candidate is found in mala fide possession of any material during a University Examination.

Clause 1.1 of the said Chapter dealing with Punishment for Unfair Means uses the expression 'possession of note, book etc. during or after the examination.' Hence, the University calendar categorizes and deals with the punishment for Use of Unfair Means and while being conscious of the stage at which the incriminating material is found in possession of a candidate i.e. during the examination or after the examination.

The above said expression becomes significant since clause 5 of the University Calendar under Chapter II provides for imposition of a punishment of disqualification from appearing in any university examination for a period of two years when such material is found in mala fide possession of a candidate "during a University examination." The above said clause does not apply itself where a candidate is found in possession of any objectionable material after the university examination. Clause 18 of the above said Chapter II of the university calendar deals with the issue of mis-conduct and again uses the expression "during" or "at any time after the termination of the

examination.” The above said Chapter uses the expression “during a university examination” in clause 3.1, 3.2, 4, 5, 6, 8, 9, 10 and 11.1.

While the detection of objectionable material, pre and post the examination is dealt separately. The said chapter also prescribes higher punishment on an examinee/candidate where the candidate does not obey the Superintendent or a member of the Supervisory staff. The punishment in such circumstances may extend to five years or even a permanent debarment.

The provisions of the University Calendar stipulate both the eventualities but the imposition of penalty of debarment is contemplated only in an eventuality when a candidate is found in possession of such a material during a university examination and not before or after the exam has been attempted.

The above said stage is of significant importance in the facts of the present case since the purported detection of the use of unfair mean is stated to have taken place at 12:28 P.M. i.e. two minutes before the examination was over. The specific case of the petitioner in the present case is that she had left her notes, prior to the commencement of the exam, on the table of invigilator and had left over her answer sheet on the table of the invigilator at 12:28 P.M. and thereafter, collected her belongings as well as her notes from the table of the invigilator. It is not the case of the invigilator or the supervisory staff deputed at the examination centre that the petitioner was ever detected using the material for attempting her paper.

Another significant aspect is use of separate expressions. While “possession of books and notes” is used in clause 3.1, 3.2 and clause 4 of the Chapter II Volume 11 of the University Calendar dealing with punishment for use of unfair means, Clause 5 uses the expression “mala fide possession.” Thus, possession of a note would not attract clause 5 of the said regulation and that such material ought to be in possession of a candidate, during the course of a university examination, with a mala fide intent before the punishment of disqualification for two years can be imposed. The burden is thus, onerous and the university is required to establish that the candidate was found in mala fide possession of the incriminating material during the university examination. ‘Mala fide’ has even though not been defined under the said chapter but necessarily implies an ill-intent to make use of the objectionable material during the course of examination.

In the said background and distinct expressions used in the Calendar, it requires a more cautious consideration of the evidence relied upon by the respondent-University before fastening the liability and imposing the punishment on a student. The use of such expression is apparently deliberate. The intent of the University is not to impose punishment on a mere recovery of an objectionable content/material in his/her possession but for the ‘use’ of such material during exams. These distinct categories are undisputedly to protect a student being in an inadvertent or negligent possession of material against conscious possession with a mala fide intent, from imposition of penalty and thus impacting the career and prospects. Hence, before the stricter clause is

applied for imposing punishment, the case of Unfair Means should fall within the four corners thereof failing which the benefit ought to be extended in favour of the examinee.

A crucial aspect of this case pertains to the existence of the CCTV Cameras at the examination centre. The specific case of the petitioner has been that CCTV cameras had been installed at the examination centre and that the footage thereof ought to have been verified by the respondent authorities to ascertain whether the petitioner made the use of any objectionable material and establish mala fide possession of such material during the examination, by making a reference to the video recording. The photographs showing existence of the CCTV cameras as also their subsequent removal have been brought on record. The emphasis of the respondents has been that there are no CCTV cameras installed in the UILS, however, at the same time, the response to the other paras is contradictory when it is stated that the CCTV footage is not preserved after a period of 25 days. The question of preservation of the footage in the DVR would come into question only in case such CCTV cameras have been installed. Additionally, even though the petitioner had made a specific reference to the information received by her under the Right to Information Act, 2005, about the existence of 29 cameras in the premises yet, the Director UILS in her reply to the Standing Committee has chosen to maintain a silence on the said aspect. The response is evasive and not adverting to the issues that had been raised. No material was produced by the department to controvert the specific assertion of the petitioner by placing reliance on the information

furnished by the respondent- Department itself, while responding under the Right to Information Act, 2005. The failure of the respondent to respond to the same and rather submit a reply which denied and defies its own information furnished is clearly a suspicious circumstance.

It was for the University to come clear on the issue as to whether CCTV cameras had been installed or not and if so, when were they removed. Further, once the case of use of unfair means was being made out on 15.05.2023, there was no occasion as to why the CCTV footage of the camera installed in the examination centre ought not to have been preserved. To the contrary, the respondents allowed the primary evidence to be over-written by subsequent recording. The same leads to a casual approach of the University in matters which affect the career, prospectus as well as lives of the students. There is no reason as to why the primary evidence, which could have been easily secured by the respondent, ought not to have been preserved. The failure to come clean on the said aspect, despite specific assertions by the petitioner, rather, compels this Court to draw an adverse inference against the respondent-University.

Another significant aspect which has been noticed in the present case is that the University procedure mandates that the entire incriminating material ought to be made available and put to an accused, being inherent and as a part of principles of natural justice. However, the questionnaire (Annexure P-10) shows that the answers in the said questionnaire have been written, without the University filling up the left column of the said questionnaire. Even though the University has

appended the complete questionnaire in which the left column is also filled up, however, it certainly is a suspicious circumstance indicating that the answers were written prior to filling up of the column on the left side of the questionnaire which related to the incriminated material.

At the same time, much emphasis has been laid by the counsel appearing for the University that the petitioner had herself confessed her misconduct and use of unfair means on the same day and in her own hand writing. The same has been appended by the respondents along with their reply as Annexure R-3. A perusal of the said letter also shows that the alleged admission is written later as a post script and below her signatures and as a hand written note by drawing an arrow. It is only the subsequently hand written note, which is more in the nature of script without an acknowledging under signatures, that the alleged admission of having used the notes is recorded. Clearly, such a writing would have figured only in case the same is dictated later in point of time and the authority also directed to also add those aspects. The possibility of the addition having been dictated by the officials hence cannot be ruled out.

Another relevant fact is that the petitioner is a young girl of 20 years who had been recovering from a family tragedy and was caught up under circumstances where she would be under extreme pressure. Besides, University Calendar also specifically provides for a harsher punishment for not adhering to the directives of the Supervisory staff. The specific case of the petitioner is that she was directed by the authorities to write, as is being told to her, failing which they shall

recommend imposition of harsher punishment. Hence, she wrote down as was dictated to her and was told to her to be written. The circumstances cumulatively and collectively do not reflect at a voluntary admission of guilt on the part of the candidate and the same would still require the university to dispel all such circumstances to establish that a fair opportunity and enquiry had been conducted by the Standing Committee into the incident of alleged use of unfair means.

Another aspect which weighs consideration is that the Standing Committee had itself sought for details of the CCTV footage, however, it chose not to confront the petitioner with the reply submitted by the UILS. Once the petitioner had offered herself to be confronted with any material which could possibly induct her, on verification from the CCTV footage, the rules of prudence and principles of natural justice would have been better served if she had been afforded an opportunity to respond to the communication received from the Department. Even though under ordinary circumstances, such a response received from Director, UILS may have been sufficient and good enough to close a case against a student, however, the said omission is of significant importance in the facts of the present case since the information supplied by the Director, UILS under the Right to Information Act, 2005, runs contrary to the information furnished by her to the Standing Committee on the use of unfair means.

The punishment of debarring the petitioner from appearing in any university examination for two years is primarily based on absence of any CCTV footage by relying on the

admission/communication purportedly written by the petitioner herself. The defence of the petitioner about the CCTV footage having been demolished, it laid foundation for imposition of harsher punishment. The defence being primary, crucial and fundamental to ascertaining the misconduct of the petitioner, the final order would certainly come under a scanner if the foundation of the order passed by the Standing Committee is doubted. The decision would thus be on strength of an evidence which has a shaky foundation and cannot be accepted a gospel truth. Since the order imposing punishment does not make a reference to any other material, hence, it became imperative to ascertain and preserve the CCTV footages. The order imposing debarment for a period of 02 years from appearing in any University examination being penal in nature, such consequence should not ordinarily be imposed on a candidate merely on a suspicion. The circumstances, which have the potential of disputing and upsetting the foundation of the case of the Department, are required to be dispelled before any inference can be drawn against a candidate. The affixation of liability for misconduct of being in malicious possession of an incriminating material thus requires a higher degree of onus to be discharged by the respondent-University.

Another aspect which has weighed with this Court is that the specific contention of the petitioner being an outstanding and meritorious student has remained uncontroverted. It is significant that the incident in question has happened during the course of examination of the 5th semester, and as such, the petitioner had already undertaken exams for four semesters. The respondent university could have referred

to the material, including her performance as a student in a board examination as also as a university student, to controvert the academic strength and performance of the petitioner, however, the respondent University has chosen not to advert to any such material. The specific assertion the petitioner having an outstanding academic record and having been a head girl and a meritorious student having won laurels and accolades thus, remains undisputed.

The respondent-University has also failed to rebut the specific contention that the detection of the incriminating notes was two minutes prior to the end of the examination time. The petitioner was not detected or suspected of using the material in her possession during the University examination. The detection of the material, after the examination would not fall within Clause 5 of the University calendar, which prescribes the condition of 'being in a mala fide possession of the material during the course of examination.' The same, under the given circumstances, at best falls under Clause 4 of the part II of the University Calendar which deals with the issue where a candidate is in an inadvertent possession of a material and mandates debarment only for the concerned paper and not for the subsequent examinations.

It is further illustrated and established that even though the statutory appeal/review of the decision was made available as per the university calendar, however, no opportunity of hearing has been extended to the petitioner to make her submissions and to establish the contradictions in the stand of the responden-University itself.

Further, being conscious of the fact that the primary evidence, which could have established the use of such material during the course of examination, having been destroyed due to passage of time, the petitioner may have lost out on her best chance to prove her innocence even if such failure was owing to the officials failing to gauge the significance of preserving such material, if not mala fide. Thus, the version of the petitioner vis-a-vis the respondent shall remain a disputed question.

Ordinarily, benefit of such a lapse or failure to preserve the evidence by the university would advert to an Examinee, however, at the same time, this Court is conscious that the petitioner has not leveled any mala fide against the invigilation staff. Further, she has in her response to the questionnaire submitted that the said notes remained in her pocket on account of inadvertence and that she never intended to carry any objectionable material or to use the same and that she had also not used any such incriminating material during the course of the exam. Hence, she admitted of being in possession of material but not the mala fide possession of material during her exam.

Noticing all the said aspects, I am of the opinion that the case in question would not fall under Clause 5 read with Clause 8 of the University Calendar and is required to be dealt with under Clause 4. The orders dated 14.08.2023 and 09.10.2023 are hence set aside and the order of punishment is modified and the punishment as stipulated under Clause 4 is ordered to be imposed upon the petitioner. Hence, the petitioner would be debarred from passing in that paper only as a

disciplinary measure, and punishment of debarment is set aside.

Both the petitions stands disposed of and partly allowed as
above.

Pending, misc. application(s), if any shall also stand(s)
disposed of accordingly.

A photocopy of this order be placed on the file of connected
case.

February 12, 2024.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*