

108 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-24547-2023
DECIDED ON: 2nd NOVEMBER, 2023

SHIVAM TANWAR AND OTHERS

.....PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Ashwani Kumar Chopra, Sr. Advocate with
Mr. Vidul Kapoor, Advocate
for the petitioners.

Mr. Harmonjot Singh Gill, Advocate
for respondent No.4.

SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked under Article 226/227 of the Constitution of India for the issuance of writ in the nature of Certiorari quashing communication dated 11.10.2023 (Annexure P-2) directing the petitioners to appear before the Standing Committee, communication dated 17.10.2023 cancelling the entire examination in which petitioners appeared (Annexure P-4) and communication dated 20.10.2023 rejecting the application dated 18.10.2023 filed by the petitioners for reconsideration of Annexure P-4 (Annexure P-7) which has been passed by the respondent no.3 illegally, arbitrarily, unconstitutionally. Further to issue writ in the nature of Mandamus directing respondents to permit the petitioners to continue with and attend the regular classes for the current academic year and also to constitute an Independent High Powered committee to look into the discrepancies in conducting the examinations at the exam centre.

2. The essential skeletal material facts are that the petitioners after clearing National Eligibility-cum-Entrance Test (NEET) in 2021, got enrolled in MBBS course.

for a tenure of five and half years in Adesh Medical College and Hospital, Shahbad (Respondent no.6) affiliated to Respondent no.2 University. As per the rules of the University it is mandatory to clear all the examinations to be promoted to the next academic year. The annual examinations of the first academic year was scheduled between 9.02.2023 to 19.02.2023 and the petitioners were allotted centre at Shri Krishna Govt Ayurvedic College, Kurukshetra (Respondent no.7) having following roll no's :-

STUDENT'S NAME ROLL NO.

- | | |
|-------------------|--------|
| 1. Shivam Tanwar | 915714 |
| 2. Sarthak Gupta | 915706 |
| 3. Satyam Paliwal | 915707 |

3. The respondents No.2 to 5-University announced the result on 09.03.2023 wherein the petitioners were declared 'PASSED' and copies of the Result-cum-Detailed Marks were issued by Controller of Examinations. Respondent no.3, on 03.05.2023 (Annexure P-1). Accordingly, the petitioners were promoted to the 2nd year for which the classes are stated to have commenced from 13.03.2023 onwards which the petitioners are regularly and diligently attending.

4. Mr. Ashwani Chopra, learned senior counsel taking up cause of the petitioners contend that respondent no.3-University issued a communication dated 11.10.2023 (Annexure P-2) whereby the petitioners were heedlessly directed to appear before the Standing Committee on 12.10.2023 at 10.30 am, in his office. The Sr. counsel also asserts that the notice calling upon the petitioners is only qua those, whose name starts with 'S' alphabet, in response to which, the petitioners swiftly

appeared before the Standing Committee on 12.10.2023 and categorically denying allegations.

5. The learned senior counsel for the petitioners further argues that to the utter dismay of the petitioners, respondent no. 2-University haphazardly cancelled the entire examination in which the petitioners had appeared and aggrieved against such an action, an application dated 18.10.2023 was submitted to respondent no.3 for reconsidering the order dated 17.10.2023 (Annexure P-5). Mr. Chopra states that though such application was considered, but the respondent university sticking to its earlier decision issued another Memo dated 20.10.2023, thereby merely as an eyewash reconsidered and decided the grievance without providing any reasonable opportunity of hearing.

6. Mr. Chopra vehemently stress upon the violation of principle of natural justice, while arguing that what to talk of a reasonable and fair opportunity of being heard, no opportunity at all has been given to the petitioners and, therefore, the action of the respondent-University to cancel the examination as a whole qua the petitioners suffers from illegality on that account alone.

7. He has also submitted that the petitioners have been made scapegoat shifting the entire burden upon them for irregularities, if any, took place in conducting the examination in question at the center, particularly in the light of the fact that what made the respondents remain tight lipped for over 7 months, even after the declaration of result on 09.03.2023 and since then after having promoted to the 2nd year, the petitioners are attending the classes regularly.

8. He also assailed the action of the University on the strength of the fact that why only 8 students out of 23 in one single room can use alleged unfair means, which never came into the notice of the invigilator or the flying squad, if at all, unfair means were being used by the petitioners. He challenges the allegation asserting them to be vague and baseless without any incriminating material against the innocent students and is a result of a conspiracy hatched at the end of college and the

university being hand in glove, as under the garb of alleged unfair means, the petitioners are being asked to appear in the examination for the 1st year again, only on depositing the fresh fee to the tune of Rs. 22 lakh approximately for the whole academic year.

9. He also challenges the action of the respondents on the ground that even as per own ordinance of the University dated nil (Annexure P-9), which elaborate punishment for use of unfair means, there is no provision to cancel the whole examination and as such the conduct of respondents being lackadaisical attitude is hit by Article 14 of the Constitution being against the basic principle of reasonableness and fairness.

10. Lastly, Mr. Chopra argues to assert that it is a question of one full academic year for the petitioners, wherein they are being punished for unfair means, having no incriminating material against them and without conducting any inquiry into it, therefore, seeks quashing of communication dated 11.10.2023 (Annexure P-2) dated 17.10.2023 (Annexure P-4) and dated 20.10.2023 (Annexure P-7) referring to the pleading from Para 7 of the writ petition to the effect that after declaration of the result on 09.03.2023 without attributing any overt act to the utter dismay and shock of the petitioners, action on 11.10.2023 has been initiated after a gap of almost 7 months.

11. This Court having heard Mr. Ashwani Chopra, learned Sr. Advocate appearing for the petitioners, directed Mr. Harmanjot Singh Gill, learned Advocate for respondents No.2 to 4 who was present in Court, having served with an advance copy of the writ petition, who appeared for respondents No.2 to 4, to produce the original record and deferred the hearing to 02.11.2023.

12. Today, Mr. Gill, learned Advocate for respondents No.2 to 4 produced the record in original alongwith a pen-drive showing the CCTV footage of the room allocated to the petitioners in the sitting plan for the examination in question, which is taken on record as Mark 'A' and 'B'.

13. He submits that the respondent university was not sleeping over their duties, who was rather conducting in depth proceedings after receiving the complaint from Registrar, Shri Krishna Ayush University, Kurukshetra dated 22.02.2023, at the office of Director General Medical Education & Research, Haryana on 23.02.2023 by constituting an Internal Standing Committee.

14. Mr. Gill has given a date wise breakup of the action taken from the date of receipt of aforesaid complaint in the following manner:-

02.03.2023- *Principal (Superintendent-in-chief), Shri Krishana Government Ayurvedic College, Kurukshetra was asked to give comments in the matter and the Registrar of the University was called upon to provide the CCTV footage.*

10.03.2023- *An email was received from the Registrar, Shri Krishna Ayush University, Kurukshetra with the comments that the students were found sitting not in accordance with sitting plan and neither there was reasonable distance between the benches, as is evident from the CCTV footage of the examination center.*

13.03.2023- *The Principal (Superintendent-in-Chief) Shri Krishna Government Ayurvedic College, Kurukshetra furnished the comments categorically reiterating that the Controller of Examinations of Ayush University was intimated telephonically on 17.02.2023 qua the irregularities taken place in room No.75.*

14.03.2023- *3rd email was received from Registrar, Shri Krishna Ayush University, Kurukshetra for deputing an official with one hard disk/pen-drive so that CCTV recording of the examination center could be provided and needful was done.*

29.03.2023- *CCTV footage was made available to the University.*

11.04.2023- *An internal committee was constituted after getting the CCTV footage.*

- 03.05.2023-** *The Internal Standing Committee held a meeting and observed in the proceedings that action is required as per policy stand guidelines and University Ordinance against the offending students, invigilator and examination center.*
- 10.05.2023-** *After approval of the proceedings of internal committee the Registrar, Shri Krishna Ayush University, Kurukshetra was requested to take disciplinary action as recommended by the said Committee and to put up the matter before the Standing Committee dealing with unfair mean cases for taking final decision regarding the petitioners.*
- 27.07.2023-** *The case was put up before the Standing Committee on unfair means, as per Ordinance No.4-punishment for use of unfair means under Regulation No.7 and on the asking of the said Standing Committee, the Principal, Superintendent-in-Chief was asked to provide sitting plan, signature chart and list of staff deputed in Room No.75 on 17.03.2023.*
- 25.08.2023-** *2nd meeting of the Standing Committee convened on 25.08.2023 where the Centre Supdt Dr. Vidushi Tyagi & Invigilators were requested to report in the office of Controller of Examination Dr. B.D. Sharma but Centre Supdt showed her inability to appear before the committee.*
- 31.08.2023-** *Dr. Vidushi Tyagi & Invigilators were again requested to appear before the committee and finally she appeared on 04.09.2023, who stated that on watching the CCTV footage, the students bearing roll nos. 915706, 915707, 915712, 915713, 915714, 915719, 915724, 915725 are found guilty.*
- 12.10.2023-** *The Standing Committee in its another meeting discussed and deliberated in detail and ordered punishment under Rule 3(b) (iii) of Ordinance No.4 and decided “entire examination stands cancelled, in which he/she appeared.*

17.10.2023- *After approval of the aforesaid proceedings of the Standing Committee meeting dated 12.10.2023, the petitioners were informed through concerned colleges.*

20.10.2023- *On a request of the petitioners, matter was again put up before the Standing Committee on unfair mean cases, wherein the Committee after reconsideration of the matter decided that previous decision stands.*

15. Heard learned counsel for the respective parties.

16. This Court has examined the issue cautiously and not merely on the basis of submissions but the original record produced by the University, after associating the learned counsel for the petitioner as well also perused the CCTV footage in the open Court itself.

17. It has come on record that Shri Krishna Ayush University, Kurukshetra was created as one of the examination center alongwith other 13 centers for various UG/PG courses for the annual examination relating to the session 2022-23 as per directions of the Director General, Medical Education and Research, Government of Haryana. The exam took place during the period 09.02.2023 to 19.03.2023 for MBBS first prof. students i.e., qua the petitioners being student of Aadesh Medical College, Sahabad. The examination raising eyebrows and awakening the mind of disciplinary authorities of the respondent No.2-University relates to the date 17.02.2023.

18. This Court after having called for the original record perused the same and ascertained that there is a complaint by the Registrar, Shri Krishna Ayush College, Kurukshetra intimating via e-mail that irregularities have been found at examination center and even recommendation was made to get registered an FIR. The said complaint very clearly gets mention about the CCTV recordings to authenticate the version in the complaint dated 22.02.2023 and in pursuance thereof a complaint date wise correspondence inter-se between the university and the college as well as

the Controller of Examination of the University is available in the record, as was referred by Mr. Harmanjot Singh Gill, learned Advocate for respondents No.2 to 4.

19. The proceedings conducted subsequent to receipt of complaint including examination of CCTV footage, constitution of internal committee on 11.04.2023, and its proceedings on various dates, which recommended action to be taken as per policy/guidelines and Ordinance of the University against the erring students, invigilator and examination center as well, which were approved on 10.05.2023 and a decision was taken to put up the case for disciplinary action before the Standing Committee for unfair mean cases.

20. The said Standing Committee on unfair means held its meeting on 27.07.2023, which called upon the center's Superintendent namely Dr. Vidushi Tyagi and other invigilators for statements, who firstly sought time showing inability to appear on 27.07.2023 and even on 25.08.2023. Finally again only on her request dated 31.08.2023, the said meeting was deferred to 04.09.2023.

21. The Standing Committee on Unfair means heard in person Dr. Vidushi Tyagi, (center Superintendent) and other invigilators alongwith scrutinizing the CCTV footage. On these enquires, it found the petitioners and other students identified with their roll numbers. It is prima facie using unfair means. Thereafter, the petitioners and all such other students were called upon to appear in person before the aforesaid Standing Committee on 12.10.2023 to explain and submit their defence.

22. A perusal of the proceedings dated 12.10.2023 establish that the petitioners have actually appeared, who were countered with the said CCTV footage to which they simply denied stating that they cannot recognise the students visible in the CCTV footage.

23. It is only after having conducted the thorough investigation/enquiry, the memo dated 17.10.2023 (Annexure P-4) has been issued with the decision taken by the University-respondent No.2. From such record, this Court is also duly convinced that reasonable opportunity has been provided to the petitioners, who have, in all

fairness to maintain the transparency, were shown the CCTV footage the strongest piece of evidence against them, which has been also examined by this Court, having been produced in a sealed cover through a pen-drive, wherefrom it is crystal evident in video with much clear vision showing the students including the invigilators and the other staff, who are identifiable with ease.

24. This Court having watched the CCTV footage, after associating Mr. Vidul Kapoor, Advocate, who is the briefing counsel to Mr. Ashwani Chopra, learned Sr. Advocate being present in Court throughout the proceedings and even he also could not deny the fact that the faces of all the students including the petitioners can be very well identified and it is by any stretch can't be accepted that the petitioners, when countered by the Standing Committee on unfair means with the said CCTV footage, were not able to identify themselves. Inference is obviously against the petitioners on this account as well, who have made an attempt to build up a defence, which does not hold good at all before this Court.

25. In the light of the aforesaid factual aspects supported by original record and the best piece of evidence produced by the respondent No.2-University before this Court, the contention of Mr. Ashwani Chopra, learned Sr. Advocate is also not tenable as far as it relates to the question that respondents No.2 to 4 kept sleeping and remained tight lipped for almost 7 months. As a matter of fact, the respondents No.2 to 4 have thoroughly inquired the matter, duly proceeded in accordance with law having conducted a detailed inquiry and after providing due opportunity of being heard to all the petitioners and other students, as explained stands on record.

26. I am not inclined to uphold the argument urged on behalf of the petitioners that the action against them is at an extremely belated stage, since the attending of classes of the 2nd year, would not absolve them in any manner of the unacceptable unfair means adopted by them.

27. Another contention qua not providing a reasonable opportunity to the petitioners also does not find merit with this Court, as all the petitioners were duly

called upon to appear in person and to explain their conduct in the meeting of the Standing Committee on unfair means held on 12.10.2023. The said committee has not conducted the said proceedings in a casual or as an eyewash, as has been alleged by Mr. Chopra. There is no arbitrariness or unreasonableness on the part of respondents No.2 to 4, who have countered the petitioners not in person alone but also with the best piece of evidence against them i.e., CCTV footage, wherein they can be seen clearly using unfair means. Even after issuance of memo dated 17.10.2023 on a subsequent representation by the parents of the petitioners, the same was again considered and fresh decision was taken, though, the decision was same, but merely on that account, it cannot be ruled to be unjust and unfair. Therefore, this Court has no hesitation to hold that there is a proper application of reasonableness and principle of natural justice, as such the action of respondents No.2 to 4 cannot be said to be ultra vires of the Constitution, discriminatory or suffering from any arbitrariness.

28. Another argument raised on behalf of the petitioners to allege bias against them solely laying stress to the fact that only from one room, 23 students sitting therein have been made scapegoat out of total 160 students appearing at the same center, is totally unfounded and has no bases. The specific stand of the respondents is that on examining the CCTV footage, the students appearing in the exam for the 1st academic year were found using unfair means, who were allocated room no.75 and qua other rooms, neither there is any complaint nor any incriminating material might have been found by the respondents to initiate action against others. In any case, just on that account also the action taken against the petitioners cannot be termed to be bad or justify the argument of bias and mala fide on the part of respondents No.2 to 4 against the petitioners, it did not satisfy the test of establishing bias and mala fide against any person, since except this fact, no other reason and pleading have been put forth before this Court against any of the respondents.

29. The last argument to be dealt with by this Court, as raised by Mr. Chopra relates to the non-compliance of Clause 4 of the Ordinance (Annexure P-9), wherein he has argued that under the said Ordinance, there is no provision to cancel the entire examination. Having gone through the said Ordinance as well, unfair means have been defined in Clause 4, which include:-

- a) Having in his possession or accessible to him during examination hours any papers, books or notes, written or printed or any kind of material including body, clothing etc.*
- b) Writing during the examination hours on any material (including the question paper or blotting paper) other than the answer-book.*
- c) Talking to another candidate or to any person other than the members of the supervisory staff in or outside the Examination Hall during the examination hours.*
- d) Consulting notes/books in or outside the Examination Hall during examination hours.*
- e) Attempting to take or taking help from any notes or hints written on any part of the body or on the clothes worn by the candidate or on the furniture being used by the candidate.*
- f) Receiving help from another candidate with or without his concept or giving help to another candidate or receiving help from any other person during examination hours.*
- g) Disclosing his identity deliberately or making any distinctive marks in his answer-book for that purpose or making an appeal to the examiner through the answer-book or using abusive or obscene language in the answer-book.*
- h) Presenting to the examiner a practical or class-work-note-book which does not belong him.*
- i) Communicating or attempting to communicate, directly or through another person with an examiner or with an official of the University with the object of influencing him in the award of marks or making any approach or manipulation for that purpose.*
- j) Swallowing/destroying any note, paper etc. found with him during the examination hours.*
- k) Making deliberate arrangement to cheat in the examination, such as;*

- i) Smuggling of an answer-book/continuation sheet in or outside the examination hall or insertion in the answer-book of any sheet (s) written outside the examination hall.*
- ii) Substitutions, wholly or partly, of an answer-book/continuation sheet by another answer- book/continuation-sheet during or after the examination hours.*
- iii) Impersonation.*
- iv) Obtaining admission to the examination of a false representation.*
- v) Forging another persons' signature.*
- vi) Failing to deliver his answer-book to the person Incharge before leaving the Examination Hall.*
- vii) Tempering with the particulars, including roll number, written on another candidate's answer-book and/or writing wrong particulars, including Roll Number on one's own answer book.*
- l) Refusing to obey the Centre Superintendent or any other member of the supervisory staff/ inspecting staff or creating disturbance of any kind during the examination or otherwise misbehaving in or around the examination hall or threatening or assaulting any official connected with the examination, any time during, before or after the examination.*
- m) Any other act of unfair-means/misconduct not covered in these provisions.*

30. The case of the petitioners using unfair means certainly falls within Clause 4(c), which pertains to talking to another candidates or to any person other than the members of the supervisory staff '**in or outside**' the examination hall during the examination hours apart from Clause 4(e), Clause 4(f), Clause 4(i), Clause 4(k(i)) and Clause 4(l), as recorded hereinabove. The argument of Mr. Chopra needs to be tested on the definition, as envisaged vide Clause 4 of the Ordinance, which enlarges the meaning of unfair means the said Ordinance vide Clause(4) (m) to include any other act of unfair means/mis-conduct would also be a dealt with, which is not covered in this provision.

31. Thereafter, the procedure as stipulated in the said ordinance vide clause 6 and 8 has also been followed, wherein the Superintendent of Examination Center namely Dr. Vidushi Tyagi has duly reported to the University the irregularities at the said center with specifying room no.75. It is on the basis of said report, as per Clause 7 of the Ordinance, the Internal Standing Committee was constituted, which conducted a preliminary inquiry and Standing Committee on Unfair Means dealt with the issue, which has the powers as enshrined vide Clause 8 therein. Ordinance 8 duly empowers the Standing Committee on Unfair Means to cancel either the paper or the entire examination, in which the candidates had appeared. The same needs to be glanced for convenience of all and accordingly is reproduced hereinbelow:-

Committee shall have the power to:

- i) Cancel the particular paper or the entire examination in which he has been found guilty of use of unfair means, such cancellation of paper will mean award of zero mark in the paper and cancellation of the entire examination will be treated as failure in the examination
- ii) Debar the candidate from appearing in the said examination and/or in any other examination conducted by the University upto a period of three years.
- iii) The following are the guidelines for the Standing Committee on unfair means cases for award of punishment to the candidates who indulge in unfair means.

Nature of Misdemeanor	Punishment
a) For relevant material found in the candidate's possession concerning the subject and the paper in which the candidate appeared irrespective of the evidence that the material had been used for copying.	Cancellation of the paper or of the entire examination in which the candidate appeared.
b) For being found with material relevant to the subject of paper with the evidence of copying or attempt at copying	Cancellation of the entire examination in which the candidate appeared, in addition, the candidate may also be debarred from appearing at the

c) For major misdemeanor like smuggling in and out of the answer-books/continuation sheets, impersonation and misconduct etc.	University examination for one year. Cancellation of the entire examination in which the candidate appeared, in addition, the debarring him appearing in the University examination upto three year.
d) Any other misdemeanor not covered in (a), (b), (c) above.	Cancellation of the entire examination in which the candidate appeared, in addition, the debarring him from appearing in the University examination upto three year.

32. Clause 9 further envisage that if, there is a divergent opinion among the members of the Committee, the matter shall be referred to the Vice Chancellor and, in case the decision of the committee is unanimous regarding the guilt of a candidate and the quantum of punishment, its decision shall be final.

33. This Court is of the considered view, after having tested the argument raised by Mr. Chopra within the parameters of ordinance relied upon by the petitioners, that the Standing Committee on Unfair Means is duly empowered and within its domain has cancelled the entire examination being unanimous on the guilt of the petitioners as well as quantum of punishment and decision is also to be considered as final.

34. This Court also has to borne in mind that:-

Using unfair means in examinations is not only unethical but also detrimental to the overall development of individuals and the nation as a whole. MBBS students, who are pursuing a career in medicine, are expected to adhere to the highest ethical standards due to the critical nature of their profession. Some reasons, why using unfair means in examinations can hinder their ability to contribute to the nation's well-being can be summed up as under:-

- a) *Medical professionals are entrusted with the well-being and lives of patients. Using unfair means in examinations demonstrates a lack of integrity and ethical values, which can be a serious concern when making life-or-death decisions in the health care field.*
- b) *The medical field requires a deep and thorough understanding of scientific and medical knowledge. Cheating or using unfair means to pass exams can lead to a lack of competence, potentially endangering the health and lives of patients.*
- c) *Trust is a cornerstone of the doctor-patient relationship. If it becomes known that a medical professional cheated their way through their education, it can erode the trust that patients and the public have in the health care system.*
- d) *Using unfair means in examinations can have legal consequences, such as getting expelled from the program or facing legal charges. This can hinder one's ability to practice medicine and contribute to the nation's health care system.*
- e) *Ethical and competent doctors contribute to medical research and advancements. Cheating can hinder one's ability to engage in research, which is essential for medical progress.*
- f) *When students use unfair means in examinations, it can negatively influence their peers and create a culture of dishonesty. This can further erode the ethical standards within the medical community.*
- g) *Even if some individuals manage to graduate through unfair means, their lack of competence and ethical standards may catch up with them in their professional careers, leading to disciplinary actions or legal consequences.*

The MBBS students, are expected to uphold the highest ethical standards and demonstrate competence and integrity in their work. Using unfair means in examinations not only jeopardizes their own careers but can also have serious consequences for the nation's health care system and the well-being of its citizens. Building a nation's health care infrastructure and ensuring the health and safety of its citizens requires a strong foundation of ethical and competent medical professionals.

Such act especially by MBBS (Bachelor of Medicine, Bachelor of Surgery) students is detrimental not only to the individuals involved but also to society at large. Here are some key reasons why this is at pain and concerned:-

- *Patient Safety: MBBS students are trained to become medical professionals responsible for the health and well-being of individuals. If they resort to cheating or unethical practices during their education, it can compromise their knowledge and skills, ultimately putting patients at risk.*
- *Erosion of Trust: Society places immense trust in health care providers. Cheating erodes this trust, as it raises questions about the competence and integrity of future doctors. It can lead to skepticism and apprehension among patients, affecting the doctor-patient relationship.*
- *Public Health Impact: A poorly trained doctor can make mistakes with serious consequences. Unfair means in medical education can result in substandard doctors entering the workforce, potentially leading to medical errors, misdiagnoses, and inadequate patient care.*
- *Legal and Ethical Violations: Cheating and unfair means often involve legal and ethical violations. Engaging in such activities can result in legal consequences, disciplinary actions, and damage to one's professional reputation.*

Undermining Education Standards: Fair and rigorous assessment is essential to maintain the quality of medical education. Unfair means undermine the integrity of the education system, devaluing the qualifications of those who have studied diligently and harming the reputation of educational institutions.

35. Addressing this issue requires a multi-faceted approach, including enforcing strict anti-cheating measures, promoting a culture of academic integrity, and ensuring that MBBS students are held to high ethical and professional standards. Ultimately, the responsible education and training of health-care professionals are vital for the well-being of society and the individuals.

36. As regard the submissions of learned Sr. counsel to the effect that respondent-University be directed to give an opportunity of hearing to the petitioners, at this stage cannot be acceded to as noticed hereinbefore, it is the positive case of

respondent-University duly supported by the documentary evidence in the form of original record of the proceedings of various committees including the Standing Committee on unfair means that due opportunity of hearing had been given to all the petitioners and even otherwise in a case of copying in the manner, as has been done in the instant case, is clearly evident from the CCTV footage, the principle of natural justice need not be strictly complied with.

37. The Supreme Court in *Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasar Samity and Others*, [1998] 9 SCC 236 observed :

"In the face of this material, we do not see any justification in the High Court having interfered with the decision taken by the Board to treat the examination as cancelled. It is unfortunate that the student community resorts to such methods to succeed in examinations and then some of them come forward to contend that innocent students become victims of such misbehaviour of their companions. That cannot be helped. In such a situation the Board is left with no alternative but to cancel the examination. It is extremely difficult for the Board to identify the innocent students but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far as this examination was concerned. It had no alternative but to cancel the results and we think, in the circumstances, they were justified in doing so. This should serve as a lesson to the students that such malpractices will not help them succeed in the examination and they may have to go through the drill once again. We also think that those in charge of the examinations should also take action against their Supervisors/Invigilators, etc., who either permit such activity or become silent spectators thereto. If they feel insecure because of the strong-arm tactics of those who indulge in malpractices, the remedy is to secure the services of the Uniformed Personnel, if need be, and ensure that students do not indulge in such malpractices."

38. In Karthik *Deepak Sharma v. Director General, Nirma University*, 2009 (1) SCC 59, para 18, p. 67, the Apex Court observed:-

“Sympathy for students using unfair means out of place. It is indeed the need of the hour, but only for the students actually using unfair means circumstances. As regards sympathy, the Apex Court mentions some exceptional circumstances lesser punishment can be given, however, the instances of such exceptional is not clear from the judgment²⁵. Neither the Rule in question carries such circumstances.”

39. It is also to be borne in mind that the Courts should not ordinarily interfere with the functioning and orders of the Educational Authority unless there is clearly violation of some statutory Rule or legal principle.

40. I am afraid to interfere with the decision of the educational authorities, which are well equipped with a mechanism under its regulations to deal with such like cases for the reason that like petitioners using unfair means would steal march over students, who work hard to prove their worth and in case, such students resorting to unfair means are allowed to get away with it on account of sympathy or as argued by Mr. Chopra that it will cost one full academic year to them, nation cannot be built, if are dealt with leniently. They should be made to learn a lesson to adopt unfair means in their life.

41. The Apex Court in ***Dr. Ambedkar Institute of Hotel Management, Nutrition and Catering Technology vs. Vaibhav Singh Chauhan, (2009) 1 SCC 59*** has stressed on the need to maintain purity and strict discipline in the conduct of examinations, deeming it to be necessary for the overall progress of the nation. Copying and cheating in examinations is like Plague. It is a pandemic which can ruin society and the educational system of any country. If the same is left unchecked or if leniency is shown, the same can have a deleterious effect. For any country's progress, the integrity of the educational system has to be infallible. Whether it is paper setters maintaining utmost confidentiality, students not cheating, invigilators being vigilant, examiners doing their job with utmost alacrity knowing that the future of students is in their hands, Universities and colleges not tampering with results - the conduct of all stakeholders has to reflect commitment and also be unblemished.

42. This Court finds that University has already lenient in opposing the punishment of cancellation of whole examination instead of rustivating such cheaters. While exercising the jurisdiction under Article 226 of the Constitution of India having examined the decision making process and the facts that have been taken into account and as to whether the reasoning given by the authorities below is so arbitrary that no man of prudence would reach such a conclusion, this Court is of the conscious view that decision of the respondent-University and the memo so issued dated 11.10.2023 (Annexure P-2), communication dated 17.10.2023 (Annexure P-4) cancelling the entire examination in which petitioners appeared and communication dated 20.10.2023 (Annexure P-7) do not require any interference from this Court.

43. This Court otherwise ideally could have proceeded with the petitioners with stricter action, considering the false submissions made, as also the incorrect statements made during the oral hearing qua unable to identify themselves in CCTV footage. However, looking at the age of the petitioners, and the fact that they are still students, this Court, while taking note of the unethical conduct of the petitioners, refrain from taking any further action against them.

44. In the light of discussions made hereinabove, I do not find any merit in the instant petition and same is accordingly dismissed.

(SANDEEP MOUDGIL)
JUDGE

02.11.2023

Meenu

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