Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 34 OF 2008

Director (Studies) & ors. .. Appellant (s)

-versus-

Vaibhav Singh Chauhan .. Respondent

J U D G M E N T

Markandey Katju, J.

1. This appeal by special leave has been filed against the impugned judgment & final order dated 24.5.2007 of the Division Bench of the Delhi High Court in Letter Patent Appeal No. 22 of 2007. The learned Division Bench of the High Court dismissed the LPA by the following order:

> "Heard. For the reasons that will follow separately, this appeal fails and is hereby dismissed with costs assessed at Rs. 5,000/-"

2. Subsequently, the reasons were given by the learned Division Bench which have been annexed to the counter affidavit filed in this appeal.

3. Heard Ms. Kamini Jaiswal, learned counsel for the appellant and Shri Lalit Bhasin, learned counsel for the respondent.

4. The fact-s of the case are that respondent Vaibhav Singh Chauhan (hereinafter referred to as the respondent) was admitted to Dr. Ambedekar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh in the academic session 2002-03 to undergo a degree course in Hospitality and Hotel Administration. He cleared all the subjects in the first and second year. Thereafter he appeared in the third and final year of the examination for the academic year 2004-05. On 19.4.2005 while he was writing his answer script in the subject of 'Front Office Management' a slip was found in his possession which contained material relevant to the examination. The invigilation staff took the slip into their possession and a fresh answer sheet was issued to the respondent.

5. A malpractice case based on the seizure of the slip was initiated against the respondent by the Examination Committee of the appellant

Institute. In his statement dated 19.4.2005 before the inquiry the respondent admitted that the slip which was seized from his possession was in his own handwriting. Thus, he confessed the charge against him. However, he pleaded that he was extremely sorry for the misdeed and would not repeat it again.

6. By its order dated 7.7.2005 the Institute disqualified the respondent for one academic session as per Rule 9.2 of the Examination Rule of the Institute. The respondent was permitted to take readmission for the academic session 2006-07 in the same class and he had to appear in the annual examination in 2007.

7. At this stage it may be relevant to quote some of the relevant rules, being the Examination Rules of the National Council for Hotel management and Catering Technology, New Delhi (hereinafter referred to as the 'Examination Rules').

8. Rule 8.1 of the said Rules defines 'malpractice' in an examination. Sub-rule (1) of the said Rule 8.1 defines the following as one of the malpractices in the examination:

> "Candidate who is found in possession of any notebook (s) or notes or chits or any other unauthorized material concerning the subject pertaining to the examination paper."

The respondent in our opinion is clearly guilty of malpractice as defined in sub-rule (1) of Rule 8.1 of the Examination Rules.

9. In this connection learned counsel for the respondent submitted that there was no evidence to show that the respondent had actually used the said slip of paper found in his possession. In our opinion, this is wholly irrelevant. All that is relevant is whether the slip of paper found in the possession of the examinee pertained to the examination paper in question. If it does, then it is a malpractice. In this particular case, the said slip of paper was brought into the examination hall and was found to be in the possession of the examinee while the examination was going on. Whether the respondent actually used that slip or not is irrelevant. This view finds support from the decision of this Court in **C.B.S.E**. vs. **Vineeta Mahajan & another** (1994) 1 SCC 6. Moreover, this is also borne out by sub rule (1) of the Examination Rules, quoted above.

10. In the present case there is no doubt that the slip of paper contained material pertaining to the examination in question. Hence, we cannot accept the submission of Shri Lalit Bhasin that the respondent was not guilty of malpractice since he was not found to have used that piece of paper.

11. Rule 9.2 of the Examination Rules states as follows:

> "A candidate found exchanging answer book or question paper with solution or copying or having in his/her possession or accessible to him/her papers, books, notes or material relating to the subject of the question paper shall be disqualified for a minimum period of one academic session following the examination in question and is liable to be disqualified for a maximum period of three years following the examination in which he/she (deliberately) adopted unfair means. <u>The candidate found to have thus indulged in unfair means shall be deemed to have failed in all subjects. After expiry of the period of disqualification such candidate shall have to reappear in the entire examination</u>."
>
> (emphasis supplied)

12. It appears that in pursuance of Rule 9.2 the respondent has been given the minimum punishment, since he has been disqualified for one academic session allowing him to take re-admission for the session 2006-07. Hence, we find no illegality in the order dated 7.7.2005, which is annexed as Annexure **P-3** to this appeal.

13. The respondent filed a writ petition before the learned Single Judge of the Delhi High Court in which an interim order was passed by the learned Single Judge dated 31.3.2006, a copy of which is annexed as Annexure **P-5** to this appeal.

14. Since that interim order has relevance in this appeal we are quoting it in its entirety as under :

> "ORDER
> 31.03.2006
>
> CM. No. 3725/2006
>
> The charge against the petitioner is that he was found in possession of a chit/slip of paper on which some notings had been made. The records that are available at the present moment do not bear out whether this chit had actually been used in the examination. The petitioner immediately admitted to the possession of the slip and stated that it would not happen again. His contrition is, therefore, spontaneous.
>
> The respondent has imposed on the petitioner the punishment under Rule 9.2 of Examination Rules, 2001 of National Council for Hotel Management Catering Technology for one Academic Session following the Examination in question. That provision also enables the imposition of a disqualification which may extend upto three years. Rule 10.6 preserves to the authorities the relaxation of even the minimum period of punishment, viz., one year.

In the writ petition a challenge has been laid to the legality of the Rules and Regulations. Leaned counsel for the respondent states that these Rules are applicable to 24 institutes that are run by the respondents.

Before any punishment is inflicted on a person, even in circumstances where he admits to the possession of a slip of paper containing information that is relevant to or pertains to the examination, the authority should carefully exercise its mind as to whether circumstances call for a particular punishment. It has been contended by learned counsel for the petitioner that where students are involved, the commission of a fault should be viewed with some flexibility.

However, if too much laxity is shown by the authorities, especially in the case of cheating or using of unfair means in the examination, it would inexorably lead to a decline in academic standards. Learned counsel for the respondents also states that in academic matters the Court should not exercise any discretion.

So far as the last submission is concerned there is a difference in jural interference in academic standards and Judicial Review of the punishment, the Order should be a reasoned one. In the case in hand, all that is stated is that the petitioner is "disqualified for academic session as per Rule 9.2 of the Examination Rules of the National Council." The petitioner was informed that he would have to take readmission in the same class and will have to appear in the annual examination in 2007. Learned counsel for the respondents admits that while representations had been received from the petitioner he is not in a position to state whether they were disposed of or not.

The Court often encounters confessions or apologies that are calculated to get out of a delicate position. In the present case a confession/admission/apology has been spontaneous.

One full academic as well as professional year has been lost. It is not a case where by furnishing a confession the petitioner claims complete exoneration. When the respondents' Rules themselves contain the power to relax the imposition of a minimum period of punishment, this course ought to have been transversed and considered by the respondents. If it had been so done, and plausible reasons had been given in the impugned decision, for declining to impose a punishment of two years [as it actually works out to be], this Court may have been loathe to interfere in the matter. Even on such a serious matter, the respondents have not shown due concern and have not reduced to writing the reasons why a two year ban has been imposed. It is true that the Rules explain that a punishment of one year discretion employed by academic authorities. In the first case, the Court would not normally be equipped with necessary wherewithal to rule on academic criteria and therefore should be loathe to exercise writ powers. So far as judicial review of the decision taken by academic authorities is concerned if the Court can interfere in Government/administrative decisions, there is no reason why it cannot do so in the context of academic decisions also. The decision to impose a penalty, in any case, be described as an academic session. In both cases what is expected of the Court is to consider whether there was any arbitrariness in the action, or whether rules of natural justice have been violated or ignored as the case may be, or the decision is unreasonable in the Wednesbury sense. It is within these parameters that the present case has to be considered.

It cannot possibly be contradicted that the impugned order is of far-reaching consequences. In all such cases it is essential for the authority concerned to give a complete and meaningful opportunity to the delinquent to be heard. It has already been noted that the petitioner had confessed to possession of the chit almost spontaneously. It is totally left to speculation as to whether he was using the slip in the course of the

examination. A student placed in such a predicament would, with alacrity, submit his confession depending on what assurances had been held out to him by the authorities. However, where discretion is available to the authorities, to waive any punishment or impose light or heavy would be forfeiture of the examination in which the petitioner had appeared as well as the next following year. However, the Rules also, as has been seen above, repose discretion on the authority for reduction.

An interim prayer has been made for permitting the petitioner to appear in the examination 'Front Office Examination' in the course of which he was found in possession of some objectionable material. At this stage of the proceedings I am of the view that the respondents have not applied the Rules in their letter and spirit and have not kept in mind the immediate acknowledgment/admission of the guilt being in possession of objectionable material. It is certainly arguable that possession of objectionable material, per se, without a finding that that material was intended to be used in the examination, would not be punishable. If we care to think back to our student days, one would invariably recollect preparation of such kind of slips for refreshing the mind immediately before an examination, with no further intent to use it as unfair or illegitimate manner. These aspects of the case have been ignored.

In these circumstances the respondents are directed to permit the petitioner to appear in the forthcoming 'Front Office Examination'. The appearance of the petitioner in this examination will not create any equities in his favour. The results shall be kept in a sealed cover and shall be only declared on orders of the Court. Leniency in matters, such as these, was shown by the Hon'ble Supreme Court in Swatantar Dixit vs. Govind Ram, (2001) 10 SCC 761 by reducing the punishment to 2-1/2 months, which was the period of suspension already undergone.

List this application for further consideration on 1.5.2005.

WP© NO.4505/2006

Counter Affidavit be filed within two weeks. Rejoinder be filed within two weeks thereafter.

Renotify on 1.5.2006."

15. Before commenting on this interim order we would like to say that this Court has repeatedly disapproved of passing of such interim orders in educational matters vide **Regional Officer, C.B.S.E**. vs. **Sheena Peethambaran & others** (2003) 7 SCC 719 (para 6), **C.B.S.E. & another** vs. **P. Sunil Kumar & others** (1998) 5 SCC 377, **Guru Nanak Dev University** vs. **Parminder Kumar Bansal & others** (1993) 4 SCC 401 etc.

16. As noted in the above judgments of this Court, such interim orders amount to misplaced sympathy which are wholly uncalled for and often results in creating confusion and is destruction of academic discipline and academic standards.

17. Coming to the interim order of the learned Single Judge dated 31.3.2006, it may be noted that in the very second sentence of the order the

learned Single Judge stated that the record did not bear out whether the chit had actually been used in the examination. As already noted above, this was a wholly irrelevant consideration. Once it is found that the chit/piece of paper contains material pertaining to the examination in question it amounts to malpractice, whether the same was used by the examinee or not.

18. The learned Single Judge in the interim order has then emphasized on the fact that the respondent had apologized and had confessed to the possession of the chit. In our opinion this again is a misplaced sympathy. We are of the firm opinion that in academic matters there should be strict discipline and malpractices should be severely punished. If our country is to progress we must maintain high educational standards, and this is only possible if malpractices in examinations in educational institutions are curbed with an iron hand.

19. The learned Single Judge in the interim order then states –"if we care to think back to our student days, one would invariably recollect preparation of such kind of slips for refreshing the mind immediately before an examination, with no further intent to use it as an unfair or illegitimate manner".

20. Here again, we respectfully cannot approve of the above observation of the learned Single Judge. A judge is supposed to keep his personal view in the background and not inject them in the judgments. What was done in his student days was surely irrelevant for deciding the case or even passing an interim order. It is true that seeing a slip of paper before commencement of the examination is not a malpractice, but in the present case we are concerned with its use during the examination and not before the examination. Hence we fail to see how the above observation of the learned Single Judge could be justified.

21. The learned Single Judge has then directed the Institution to allow the respondent to reappear in the forthcoming 'Front Office Examination'. In our opinion, this again was wholly illegal. As noted in Rule 9.2 (quoted above), even if a candidate has used unfair means only in one paper, he will be deemed to have failed in all the papers. In the present case, the respondent no doubt was found with a slip of paper in the 'Front Office Examination' which was only one of the papers. However, in view of Rule 9.2 he will have to reappear in the entire examination i.e. in all the papers, and not merely in the Front Office Examination.

22. In view of the above, we are of the opinion that the learned Single Judge was wholly unjustified in passing the aforesaid interim order dated 31.3.2006.

23. Thereafter in the final judgment dated 30.10.2006, the learned Single Judge directed the result of the respondent to be declared forthwith for the subject 'Front Office' for which the respondent appeared in April 2006 pursuant to the interim order dated 31.3.2006, and also to declare the result of the respondent in other subjects in which he appeared in 2005. The learned Single Judge was of the view that the punishment imposed was disproportionate to the offence, particularly since the respondent had shown remorse and sought forgiveness.

24. We are afraid we cannot agree with the view taken by the learned Single Judge. As already stated above, we have to be very strict in maintaining high academic standards and maintaining academic discipline and academic rigour if our country is to progress. Sympathy for students using unfair means is wholly out of place.

25. Moreover, the respondent/examinee has been given the minimum punishment under the rules and no lesser punishment could have been imposed, except in exceptional circumstances. It is true that when a person confesses his guilt it is often treated as a mitigating circumstance and calls for lesser punishment if that is permissible. However, this is not an absolute rule and will not apply in all kinds of cases. In particular, as stated above, in academic matters there should be no leniency at all if our country is to progress. Apart from that, the respondent had been given the minimum punishment under Rule 9.2 and we fail to understand how a lesser punishment could have given to him, except by exercising discretion in a particular case. This is not that kind of exceptional case, and no sympathy was called for.

25. The learned Single Judge in his judgment dated 30.10.2006 has directed that the writ petitioner's result in the subject 'Front Office' in which he appeared in April 2006 and other papers in which he appeared in 2005 be declared forthwith. In our opinion, this was an illegal direction, because as stated in Rule 9.1, once a candidate has been found using unfair means even in one subject/paper, he <u>will be deemed to have failed in all the</u>

subjects/papers and he has to rewrite the entire examination, and not merely for the single paper in which he is found to have used unfair means.

26. An appeal was filed before the learned Division Bench of the Delhi High Court which has been dismissed by the impugned judgment which we have carefully perused. We regret our inability to agree with the Division Bench.

27. The learned Division Bench has repeated the view of the learned Single Judge that the punishment given was disproportionate to the offence committed. We entirely disagree with that view. As already stated above, the minimum punishment was imposed on the respondent and we fail to understand what other punishment could have been given to him even when he has confessed his guilt. In our opinion, this was not a fit case for exercising discretion by waiving or reducing the minimum punishment.

28. Moreover, the learned Division Bench seems to have made the same mistake made by the learned Single Judge in directing that the respondent's result of the subject 'Front Office' examination held in 2006 along with the result in other papers written by him in 2005 be declared forthwith. As

already stated above, this direction is against Rule 9.2 of the Examination Rules.

29. Shri Bhasin, learned counsel for the respondent then submitted that the examination rules were invalid. We have carefully perused the rules and find no invalidity in the same. There is no violation of Article 14 or any other provision of the Constitution or any other statute.

30. In view of the above, we are of the opinion that both the judgments of the learned Single Judge as well as the learned Division Bench cannot be sustained and have to be set aside. We order accordingly. Resultantly, the appeal stands allowed. The impugned judgment of the learned Division Bench as well as the Single Judge are set aside and the writ petition is dismissed.

31. There shall be no order as to costs.

32. Before parting with this case, we would like to refer to the decisions of this Court which has repeatedly held that the High Court should not ordinarily interfere with the orders passed in educational matters by domestic tribunals set up by educational institutions vide **Board of High**

School & Intermediate Education, U.P. Allahabad & another vs. Bagleshwar Prasad & another AIR 1966 SC 875 (vide para 12), **Dr. J.P. Kulshrestha & others** vs. **Chancellor, Allahabad University & others** AIR 1980 SC 2141 (vide para 17), **Rajendra Prasad Mathur** vs. **Karnataka University & another** AIR 1986 SC 1448 (vide para 7). We wish to reiterate the view taken in the above decisions, and further state that the High Courts should not ordinarily interfere with the functioning and order of the educational authorities unless there is clear violation of some statutory rule or legal principle. Also, there must be strict purity in the examinations of educational institutions and no sympathy or leniency should be shown to candidates who resort to unfair means in the examinations.

…….J.
(Altamas Kabir)

…….J.
(Markandey Katju)

New Delhi;
04 November, 2008