

PETITIONER:
RAJESH KUMAR & ANR.

Vs.

RESPONDENT:
THE INSTITUTE OF ENGINEERS (INDIA)

DATE OF JUDGMENT: 25/07/1997

BENCH:
M. M. PUNCHHI, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted

The two appellants, Rajesh Kumar and Harbir Singh appeared in the AIME Group 'B' examination conducted by the respondent-Institute of Engineers (India) on June 1, 1990. Their centre was at Tagore School, Karnal. No case of copying or any malpractice was ever noticed or reported by the supervisory staff attending the examination. Somewhere in October 1990, the two applicants along with 11 other examinees received identical notices from the respondent-Institute seeking their explanation on the allegations of copying and malpractice mentioned therein. The contents of the notice were that the examiner evaluating the answer books of the examinees had reported that 13 examinees had resorted to copying in as much as their answers to some of the questions in the examination were exactly the same and that on that basis it was thought that the examinees their replies to the allegations stating that similarity in the answer books could be as a result of the preparation from the same text books as available in the market and that the question of copying could not arise as would be evident from the sitting plan of the examinees. Further, it was stated that none of them was close to another and all were in different rooms. The paper in question was known as 'Quantity, Surveying and Valuation' - Second B. The plea of the examinees was negatived by the Institute and each examinee was conveyed that his results for the examination of the year 1990 stood canceled and further debarring him from appearing in the two immediately following examinations of the Institute i.e. upto the summer of the year 1991, for adopting unfair means and malpractices.

Aggrieved, the two appellants joining one Kuldip Raj put to challenge the order of the Institute-respondent by means of Civil Writ Petition No.4259 of 1991 in the Punjab and Haryana High Court which when placed before a Division Bench of that Court, was permitted to be withdrawn on November 19, 1991 with permission to file a civil suit. Thereupon, those three writ petitioners approached the Civil Court seeking to annul the offending communication and for mandatory injunction requiring the Institute to declare

their results. The Institute contested the suit. Requisite issues were framed. On consideration of the pleadings and the evidences led by the parties, the trial Court decreed the suit holding that the non-speaking order of the Institute, bereft of any reason, and the conclusion that plaintiffs were guilty of unfair means, was without any basis. Direction was given to the Institute to declare the results of the plaintiffs. The first appellate judgment and decree of the trial Court dismissing the suit in holding that when the plaintiff had appeared in the subsequent examinations after the period when their disqualification was over, no purpose would be served in decreeing the suit.

In second appeal before the High Court, the plaintiffs emerged successful for they were able to convince the learned Single Judge of that Court about the prejudice caused to their case when the answer books pertaining to the plaintiffs, as placed before the learned Single Judge, had not been put to the plaintiffs in the inquiry and secondly their sitting pattern/plan was such that the question of copying could never arise. Lastly, it was submitted that an extraneous factor had crept in the decision making process regarding the plaintiffs having appeared in examinations subsequent to the period of disqualification, without any basis as it was claimed that none of the plaintiffs had ever sat in any subsequent examination. In this situation, the High Court allowed the appeal, set aside the decree passed by the first appellate court below directing the Institute to re-decide the matter after affording an adequate opportunity of bearing to the plaintiffs disclosing to them the material which was against them and to consider their plea. The Institute was further directed to pass a detailed speaking order in accordance with law.

When the matter was thus taken by the Institute in compliance with the orders of the learned Single Judge, notices were sent to the two appellants as also their companion writ petitioner. The latter seemingly did not avail of the opportunity but the two appellants did. They appeared at Calcutta and attempted to satisfy the Institute about the doubts raised. The Institute surprisingly took a somersault in putting aside all the material, which was expected to be used against the appellants material which was relevant to the examination such as answer books and the sitting plan etc. Instead, the Institute opted for a new technique to test the ability of the appellant, which is evident from the identical orders passed in relation to both the appellants extracted below :

"The candidate informed that he consulted the book "Estimating and Costing" by Prof R.N. Dutta for the purpose of preparation. The book was obtained from the Library of the Institution at the Headquarters and the members of Examination Disciplinary Committee and the Secretary & Director General scrutinised the answers written by the candidate in his answer book with reference to the said book and observed that substantial portion of the answers written by the candidate were exactly the same as the text printed in the book. The candidate was asked to take time to read any small paragraph from the book and cram it for identical

reproduction in presence of the Secretary & Director General to justify his claim of exact reproduction of text of the said book for various answers during the Examination. The candidate failed to employ with the request."

The Institute further observed as follows

"The members of EDC and the SDG also observed that report of adoption of similar malpractices by as may as 13 candidates, including this candidate, of the same Centre in the same subject was received from the Examiner and the EDC, after the scrutiny of the cases, individually awarded the same punishment debarring all of them to appear upto Summer 1991 Examination. All, except this candidate and two others, had accepted the decision of the Institution."

The afore communication was put to challenge by the two appellants before the Punjab and Haryana High Court through Writ Petition No. 9699 of 1996. This time, the Division Bench of the High Court, without referring to the mandate and the parameters of the inquiry laid by the learned Single Judge, given in the decision in the regular second appeal, dismissed the writ petition in limine on 10.7.96 holding that the procedure adopted by the institute could not be termed as arbitrary or unfair warranting interference by that Court. This order is put to challenge in this appeal.

The resume of the afore detailed facts gives a clear insight to the minds of the members of the Institute who sat in judgment on the fate of the appellants. The doubts as expressed by the learned Single Judge of the High Court in the Regular Second Appeal pertaining to the material available and the sitting pattern and also that the appellants had never set in the subsequent examinations after the period of disqualification was over were conveniently disregarded by the Institute. It would, in these circumstances, be not wrong to assume that had the member of the Institute gone into grins with that material, the result would have gone in favour of the appellants. Conveniently, other factors were brought in replacement to conquer the field inasmuch as the appellants were put to a creaming test, there and then in order to judge their capability of memory retention in a matter of minutes. All literate men have been students at a given point of time but have not been crammers. These who cram do not achieve their goal by a single reading. It is a ceaseless effort for days and days till the desired result is achieved. Crammers inter so do not have any nexus with each other. The text of a book as the common source for cramming establishes no connection. That per-se cannot be evidence of any conspiracy between the crammers to adopt unfair means in the examination unless there be material to show that was copying of the answer books, descended from the answer book of one of the candidates, or directly from the book leading to the copying by others. The overall consideration of the Institute reflected that its members thought that they would be put to an embarrassment if the plea of the two appellants were to be accepted and therefore, thought of declining relief to

the appellants. Such result cannot be permitted to follow from the deliberation of the Institute. In the interest of fair play this court would thus step in to give a corrective dose

For the afore reasons, we set aside the impugned order of the High Court and allow the appeal of the two appellants by quashing the impugned communication dated 11, 12, 1990 (Annexure P-6) ordering closure of the matter in the interests of justice by holding that the orders of the Institute in cancelling the results of the appellants' examination and disqualifying them for two succeeding examinations, were in excess of jurisdiction and are therefore, quashed, ordering the respondent-Institute to declare the result of the appellants forthwith.

With this end result, the appeal would stand allowed with costs.