
(2012) 01 DEL CK 0187

In the Delhi High Court

Case No : Writ Petition (C) No. 33 of 2012 and CM No. 70 of 2012

Ashu Gupta

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Citation : (2012) 4 AD 529 : (2012) 187 DLT 157

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Subhiksh Vasudev and Mr. Rajbir Singh Bathla, for the Appellant;
Mohinder J.S. Rupal, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present petition is filed by the petitioner praying inter alia for quashing of the impugned Memorandums dated 27.9.2011 and 24.10.2011 respectively issued by the Deputy Controller of Examinations of the respondent/ University, whereunder the entire examination taken by the petitioner for the LL.B.-VI Term Examination-2011 under Roll No.67674 was cancelled on the ground that she had resorted to use of unfair means/disorderly conduct during the aforesaid examination.

2. In a nutshell, the facts of the case are that the petitioner appeared in her LL.B.-VI Term Annual Examination-2011 held on 10.5.2011 for paper LB-603. During the course of the said paper, the Superintendent of the Examination Centre recovered the examination date sheet from the possession of the petitioner whereon it was observed that there existed unauthorized handwritten material on the backside of the date sheet, which material was relevant to answering question No.8, which was set in the question paper. On 29.7.2011, a show cause notice was issued to the petitioner for use of unfair means/disorderly conduct. Vide representation dated 11.8.2011, the petitioner submitted her reply to the aforesaid notice to show cause. The relevant extract of her reply is reproduced herein below:

2. The referred minor act exam was an open book exam (bare acts were provided) so I did not carry any book for revision but I wrote few points on date sheet with pencil to revise them in my course of transit in metro from my home to the exam centre. Sir owing to my negligence I forgot to throw/erase it before entering into the examination hall and accidentally it remained in my pencil box.

3. I never intended to use the written material and I had not used the same in answering any of the question(s) & the same can be verified.

It's been written the expert report that the material has been used by me in answering Q.NO.7 but that material has no relevance to Q.NO.7 but Q.NO.8 which I did not attempt.

4. I admit my fault being negligent enough not to erase or throw it and I have committed a mistake but that was not deliberate and was unintentional.

3. After examining the aforesaid reply, the impugned Memorandum dated 27.9.2011 was issued by the Deputy Controller of Exams of the respondent/University stating inter alia that after considering all the documents on record including the personal hearing, the Executive Council of the respondent/University was satisfied with the findings of the Examination Disciplinary Committee (EDC) to the effect that the petitioner had resorted to use of unfair means/disorderly conduct during the aforesaid examination and was liable to be awarded the punishment under Clause B of the guidelines circulated to her along with the admission ticket, which stipulate cancellation of the entire examination. As per the aforesaid guidelines, the Executive Council of the respondent/University decided to cancel the entire examination in all papers and subjects taken by the petitioner under Role No.67674, while further observing that she would be eligible to be admitted to the examination afresh as and when held subsequently.

4. It is the submission of the counsel for the petitioner that upon receiving the aforesaid Memorandum, on 10.10.2011 the petitioner filed a review application before the Vice Chancellor of the respondent/University seeking an opportunity of personal hearing before the EDC. The aforesaid request of the petitioner was acceded to and subsequently she appeared before the EDC on 12.10.2011. This was followed by issuance of the Memorandum dated 24.10.2011 by the Deputy Controller of Examinations, whereunder it was observed that the punishment already awarded to the petitioner as per rules and regulations framed in that regard, would be retained. Aggrieved by the aforesaid decisions, the petitioner has preferred the present petition.

5. It is contended by the learned counsel for the petitioner that the aforesaid Memorandums are liable to be set aside on the ground that the respondent/University violated the rule of audi alteram partem while deciding the petitioner's case as it failed to afford an opportunity of hearing to her. The aforesaid submission is however contrary to the record inasmuch as it is the petitioner's own case that upon her filing a review application before the Vice Chancellor of

the respondent/ University seeking a personal hearing, she was afforded an opportunity of personal hearing by the EDC on 12.10.2011, and only thereafter was the Memorandum dated 24.10.2011 issued.

6. The second submission of the counsel for the petitioner is that the petitioner was not furnished with the material which was placed before the EDC during the hearing and was deliberated upon, thus denying an adequate opportunity to the petitioner to meet the grounds taken in the notice to show cause.

7. A perusal of the notice to show cause reveals that the petitioner was informed in so many words that unauthorized handwritten material on the backside of the date sheet had been recovered from her possession on 10.5.2011. The said point was duly dealt with by the petitioner in her reply to the notice to show cause, particularly, in paras 2 to 4 thereof as extracted in para 2 herein above. Thus, it cannot be stated by the petitioner that she was kept in the dark as to the exact nature of charges levelled against her, which she could not sufficiently meet while replying to the notice to show cause issued to her by the respondent, or later on, when she appeared before the EDC for a personal hearing.

8. It is next submitted by the counsel for the petitioner that the unauthorized handwritten material on the backside of the date sheet related to Question No.8 and not to Question No.7 and as the petitioner never attempted Question No.8, she could not have been held guilty of using unfair means to answer the question paper.

9. The aforesaid submission made by the counsel for the petitioner is untenable and fallacious inasmuch as the admit card issued to the petitioner categorically mentioned that candidates were not permitted to take with them any "unauthorized material" into the examination hall. Fact of the matter is that the notice to show cause issued to the petitioner also mentions the same charge, i.e., taking unauthorized handwritten material into the examination hall. Merely because the aforesaid unauthorized handwritten material related to Question No.8 and did not relate to Question No.7 which the petitioner attempted, is not a ground to exonerate her from the charge of resorting to unfair means for the reason that the requirement of the rules are not that the unauthorized material found in possession of an examinee ought to relate to a question that might have been attempted by him/her, rather the rules prohibit the examinees from taking into the examination hall, any unauthorized material. Even otherwise, the petitioner herself had admitted in the reply to the notice to show cause that she was found to be in possession of unauthorized material and the explanation sought to be offered that it was on account of an inadvertent error, cannot be accepted.

10. Reliance placed by the counsel for the petitioner on the judgment of the Division Bench of this Court in the case of University of Delhi Vs. Vandana Gupta, to urge that the practice of supplying a copy of the report of the EDC to the candidate concerned was not followed, may not be of any assistance to the

petitioner herein inasmuch as the notice to show cause issued to the petitioner itself stated that the petitioner was found to be in possession of unauthorized handwritten material on the backside of the date sheet, which allegation was duly replied to and sought to be explained by the petitioner in her reply. The observations made in the aforesaid case are not applicable to the petitioner in the fact and circumstances of the present case where the petitioner had been duly confronted with the nature of charges levelled against her, which had been dealt with by her in her reply to the notice to show cause. This is not a case where the petitioner did not know the reasons for which the respondent/ University proceeded to take action against her, due to which she could not effectively represent her case before the EDC.

11. In view of the aforesaid facts and circumstances, the present petition fails inasmuch as the petitioner has failed to point out any patent irregularity, arbitrariness or mala fides in the decision making process of the respondent/ University as reflected in the impugned Memorandums dated 27.9.2011 and 24.10.2011.

The petition is therefore dismissed in limine along with the pending application.