

(2003) 06 MP CK 0029

In the Madhya Pradesh High Court

Case No : Writ Petition No. 108 of 2003

Gopal Sharma

APPELLANT

Vs

The Vice Chancellor, RDVV and Others

RESPONDENT

Date of Decision : 30-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 4 MPHT 185

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : A.M. Trivedi, For Intervenor, P.K. Kaurav, S.M. Singh, in person, for the Appellant; Ajay Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—Petitioner in this writ petition is assailing the communication P-4 of Rani Durgawati University, dated 7-12-2002 by which petitioner has been required to surrender the mark-sheet of LL.B. final year as the University has found after enquiry that mark-sheet issued is false/forged/incorrect. In case petitioner fails to surrender it, FIR has to be registered with police station.

2. Petitioner is an Advocate. It is averred that he passed LL.B. final year examination in the year 2000 from Rani Durgawati University, Jabalpur. Petitioner had appeared in the final "examination in the academic session 1999-2000. He could not succeed in the main examination due to award of inadequate marks. Petitioner applied for revaluation of the answer-sheets. After revaluation petitioner was declared as having passed in the final year LL.B. examination. Mark-sheet (P-11) was issued by the University of LL.B. final year. Petitioner applied for being enrolled as an Advocate with the State Bar Council and was enrolled as an Advocate in the year 2000. Identity card, enrolment certificate were issued by the State Bar Council, respondent No. 4. Petitioner was enrolled with enrolment No. 5289/2000/Advocate. Petitioner has changed his surname from Markandeya to Sharma which was notified in the gazette (P-3). Petitioner is

practising as an Advocate and discharging his duty. All of a sudden RDVV, respondent No. 3 through Deputy Registrar has asked the petitioner by letter (P-4) dated 7-12-2002 to surrender the mark-sheet, failing which FIR is to be registered. The act of the University is arbitrary. No show-cause notice has been given. Opportunity of hearing has not been afforded. There is no reason to surrender the mark-sheet before cancelling the result. Petitioner was not noticed. Actual truth has not come to the surface. Mark-sheet was issued by the University after revaluation. The fact is not in dispute that University had issued the mark-sheet. University itself was involved in issuing mark-sheet, then it is not open to the University to ask the petitioner to surrender the mark-sheet. Petitioner can not be penalized for an act committed by the University. Any person or examinee can not have any involvement with University internal affair of issuing mark-sheet. University has to take appropriate action if any against their own staff not against an examinee. Petitioner has not been informed of an investigation done in issuance of mark-sheet. For an act of irregularity committed by the University staff, petitioner can not be saddled with the responsibility.

3. A return has been filed by the respondent Nos. 1 to 3, University and its officials. It is contended in the return that petitioner had failed in the main examination in first paper of Code of Civil Procedure, Arbitration and Limitation. He secured 32 of 100 and in paper IIIrd, Drafting Pleading Conveyancing and Professional Ethics. Petitioner had secured 28 out of 100. Petitioner applied for revaluation. The result of revaluation was notified in the case of petitioner. No change was reported. Result (R-1) of the revaluation was declared on 3-11-2002. Despite no change in the marks and having been declared fail petitioner managed issuance of a false/forged mark-sheet from the University showing him as having passed in LL.B. final examination. In forged mark-sheet of petitioner in paper Ist marks shown were 38 instead of 32. Similarly false entries were made in the marks in paper IIIrd as 43 whereas the actual marks obtained were 28. Respondent University conducted an enquiry in the matter and after detailed enquiry found that mark-sheet obtained by the petitioner is false, therefore, same was cancelled vide notification No. Examination/2002/148, dated 1-10-2002. After cancellation of mark-sheet petitioner was directed vide letter (P-4) dated 7-12-2002 to immediately surrender/deposit the forged mark-sheet which was in his possession. Petitioner instead of complying the request of return of the fake mark-sheet has filed the present writ petition. The conduct of petitioner clearly shows that he not only managed to get a false mark-sheet but also sought various documents in illegal manner on the basis of false mark-sheet obtained by him. The conduct of the petitioner is extremely unfair and tainted and petitioner is not entitled for any relief. Petitioner is guilty of deliberate misrepresentation and had obtained forged mark-sheet and misused it. Same amounts to "criminal offence" "punishable" under the "Indian Penal Code".

4. A rejoinder has been filed by the petitioner in view of the return filed by the respondent Nos. 1 to 3. It is averred in the rejoinder that mark-sheet was issued by the University. Petitioner had not managed it. Mark-sheet was issued

admittedly by the University as mentioned in the letter (P-4), thus, levelling of allegations on the petitioner is incorrect. Petitioner's case is not solitary. There are about more than 100 such cases of different students belonging to different classes and faculties to whom such mark-sheets were issued. Subsequently University had directed in such cases mark-sheet to be returned. Petitioner has not been informed of the investigation done.

5. An application for intervention has been filed by Shri Vishnu Datt Sharma seeking implementation of report of the committee headed by Dr. S.M. Singh which inquired into the matter of issuance of incorrect/ false/fabricated mark-sheets by University itself.

6. This Court directed the University to submit the report of the committee headed by Dr. S.M. Singh and also directed the University to intimate what follow up action has been taken by the University. Dr. S.M. Singh was also called to explain the report and was heard. Report of Dr. S.M. Singh has also been produced by the University to be referred later.

7. It has been informed to this Court that petitioner has surrendered the enrolment certificate to the State Bar Council and petitioner has also handed over the original mark-sheet in this Court to the University on 13-3-2003 as University required the same as per letter (P-4).

8. Shri A.M. Trivedi, learned Counsel appearing for the petitioner, has submitted that it is a case where petitioner was issued the mark-sheet by the University officials, thus, responsibility of any fraudulent act can not be saddled on the petitioner. Petitioner has not been heard by the University and petitioner can not be penalized for an act of officials and employees of the University of issuing mark-sheet. He also submitted that petitioner may be now allowed to complete the LL.B. final year course as he had failed earlier in 2000. In case this Court is not inclined to make interference in the writ petition atleast limited relief may be granted to the petitioner.

9. Shri Ajay Mishra, learned Counsel appearing on behalf of the respondent Nos. 1 to 3, University has submitted that petitioner obtained 322 out of 800 marks and was declared fail in the main examination in three subjects. Petitioner had obtained 20 marks in General Legal English out of 100, in CPC 32 out of 100 and in Drafting, Pleading, Conveyancing and Professional Ethics 28 out of 100. The mark-sheet issued shows 68 marks in General Legal English instead of 20, 38 in CPC instead of 32 and 46 in Drafting, Pleading, Conveyancing and Professional Ethics instead of 28. A copy of the tabulation register has been produced to support the above facts in which marks obtained by petitioner are mentioned. It is submitted that several students were reported to have passed the examination only on the basis of fake mark-sheet. University appointed a committee under the Chairmanship of Professor Shri S.M. Singh to investigate the matter and make suitable recommendations. Committee made a detailed enquiry and recommended that 102 mark-sheets issued after revaluation were forged or fake,

hence, University should take proper action in the matter. The petitioner's mark-sheet was one covered by the directions of the committee headed by Professor Shri S.M. Singh. On the basis of the recommendations of said committee, University cancelled the mark-sheet and results of all 102 students were also cancelled. Petitioner's result and mark-sheet were also cancelled. All 102 students were directed to deposit the mark-sheets in the University. Intention of University in recalling 102 mark-sheets is to make further investigation and to help the University in locating the course/courses where such malpractice has been done. If an employee is found to have issued the forged mark-sheet in question necessary proceedings would be initiated. University had received only 18 recalled mark-sheets. Several letters have been received back owing to change of address. It is further submitted that revaluation is permissible in two subjects. There was "no change on revaluation" and still change was made in the marks of three subjects in mark-sheet. Mark-sheet of the petitioner is clearly fake and forged and was obtained by the petitioner illegally from the University. University is serious to take action against the erring persons.

10. Perusal of the report of the revaluation investigation committee constituted by the RDVV for finding out the malpractice committed in the confidential cell and examination section indicates that in examination section large number of forged mark-sheets have been issued on the basis of forged entries in the tabulation register for issue of forged mark-sheet, the writer, checker and signatory of the mark-sheets of the respective classes appears to be prima facie responsible for malpractice committed in the confidential cell of University. The Coordinator and Asstt. Coordinator could be considered responsible. Partially Administrative Officer AR (Confidential) who has signed over revaluation sheet is also responsible for negligence of duty. Such malpractice has been committed in several other subjects also. The committee comprising of Professor Shri S.M. Singh, Dr. N.K. Saxena and Dr. J.K. Moitra was constituted. The details about composition of cell, functioning of the confidential cell, composition of examination section, procedure of mark-sheet preparation after revaluation have been elaborately given in the report. In category "I" tampering of revaluers marks by Asstt. Coordinators has been mentioned. There Were revaluations of the answer-sheet many a times. Even the wrong answer book was sent to the fourth revaluer in certain cases. There was flagrant violation of revaluation Ordinance, missing of code and numbers.

11. It is further specifically found in the inquiry report that the writer and checker of the mark-sheet were very much aware of the fake mark-sheet, they were issuing. They could be directly held responsibility for the forged mark-sheet. Racket was operating for quite a long time. Few persons have been named in the report. Forged mark-sheets were issued of LL.B., B.Com. -IIInd year, B.Sc. final year, B.Com. first year etc. Writer, checker of the mark-sheets and final signatories of mark-sheets have also been named in the report and its was recommended that University should cancel all the fake mark-sheets and committee be constituted to nab the real culprit with the help of hand writing

expert which in the opinion of the committee is still hanging around the examination section. Several documents were not handed over to the committee of other subjects and M.A. final (Sociology) and B.Com. final. Similar kind of malpractice in other subjects also can not be ruled out. The report was submitted way back in May, 2001. Details report comprises of plethora of the documents to support the conclusions arrived at by the committee. Commendable job has been done by the committee so as to weed out the evil from the sanctum sanctorium of education, the University itself. Supplementary report has also been placed on record which also suggests of gross malpractice of issuing of fake and forged mark-sheet by the University personnels.

12. Main question for consideration is whether action of the University in requiring the petitioner to surrender the mark-sheet as per letter (P-4) is proper or not.

13. It is clear that petitioner failed in three subjects in the main examination of LL.B. final year held in 2000 in General Legal English, CPC and Drafting, Pleading, Conveyancing and Professional Ethics. There is nothing to disbelieve that on revaluation the result was notified by the University and no change was found. Result was notified in November, 2000 and no change was found. Thus, petitioner had failed in 3 subjects in main examinations. However, it is clear that petitioner and concerned persons of the University colluded and petitioner got issued fake/ forged mark-sheet from the University showing him to have passed in the three subjects in which he had failed. Petitioner had obtained 20 marks out of 100 in General Legal English, 32 out of 100 in CPC and Limitation Act and in Drafting, Pleading, Conveyancing and Professional Ethics, 28 out of 100 in the main examination. He was awarded in the forged mark-sheet 38 out of 100 in CPC, 46 out of 100 in Drafting of Pleading and Conveyancing and Professional Ethics and 68 out of 100 in General Legal English. This is clearly a case of forged mark-sheet revaluation is permissible only in two subjects as per the Ordinance of the University, has not been disputed. There was change in marks of three subjects is clear from the tabulation register and the forged mark-sheet issued to the petitioner by the University which has been filed by petitioner. It passes comprehension how the marks in three subjects were changed. Revaluation is permissible in two subjects and was applied only in CPC and the Drafting of Pleading and Conveyancing and no change was found on revaluation in marks and petitioner was declared fail. It can not be said that petitioner was not instrumental in getting issued fake/forged mark-sheet from the University. Petitioner is equally guilty along with concerned persons of the University, writer, checker, issuer, etc. who have admittedly issued the mark-sheet. It is a case of blatant fraud played in the University which is sinister crime. It has broken the back bone of education system itself.

14. In the case of petitioner it is clear that forged mark-sheet was issued by the University which is stand of the University itself. The action was taken pursuant to detailed enquiry report by committee headed by Professor Shri S.M. Singh.

Thus, I have no hesitation to come to the conclusion that mark-sheet issued to the petitioner is forged and incorrect one and for issuance of the same the persons of the RDVV are itself responsible and it was issued in connivance of the petitioner and it is a case of gross malpractice obviously of under hand dealing which has been found established in examination cell by a committee constituted by the University itself. It is shocking to find that persons of University itself are involved in such an act.

15. Mark-sheet issued is forged and is against tabulation record petitioner had failed in three subjects, revaluation is permissible in two which was applied for and no change was found in the result. Obviously, it is a case of deliberate issuance of a forged mark-sheet. Petitioner was shown as passed in 3 subjects whereas he has failed in three on revaluation no change was found. Thus, petitioner is not entitled for any hearing in the instant case as the facts are writ large and forgery is clear.

16. In my opinion, petitioner has no right to be treated as having passed LL.B. final on the basis of the said mark-sheet and petitioner could not have used the mark-sheet which has been surrendered on 13-3-2003 to the University and was handed over to the University Counsel in this Court. Enrolment of the petitioner with the State Bar Council on the basis of such fake/forged mark-sheet is also illegal and void and petitioner has no right to practise on the basis of such an enrolment as enrolment certificate was surrendered during the pendency of this writ petition. State bar Council of Madhya Pradesh is directed to delete the name of the petitioner from the enrolment register and not to allow the petitioner on the basis of said mark-sheet to practise any more as an Advocate and if he is found to be practising in any capacity on the basis of the forged mark-sheet of LL.B. final examination, the criminal prosecution be launched against the petitioner by the State Bar Council of M.P.

17. Matter does not rest at that. Admittedly forged mark-sheet has been issued by the University. It is not the case where petitioner has prepared the forged mark-sheet himself. University had threatened the criminal prosecution to the petitioner, in case of his failure to surrender the mark-sheet in letter (P-4) but it is a case where the officials/employees of the University are also actively involved in issuing such fake/forged mark-sheets in collusion. Such type of criminal act and malpractice can not be tolerated that too in University even for a moment. The stand taken by the University in the return that it is a case of criminal liability under provision of Indian Penal Code on the petitioner as he got issued a forged mark-sheet from the University. Other side of the coin can not be ignored who issued it are mainly responsible. All such persons who are responsible have to be treated alike and have to be booked and brought to the ordinary course of law for committing such a serious crime. Issuance of forged mark-sheet by the University is most sinister act and obviously ordinary course of law has to be followed, result is the criminal investigation into the offence such a serious nature which has been found established. University is given an

opportunity to fix the responsibility of issuing of the forged mark-sheet in the case of the petitioner within thirty days from today and of lodging the report with the police if, the University is not able to identify the culprit for any reason whatsoever, let the investigation be made by police to fix up the responsibility in the case of issuing fake mark-sheet. University has asked the surrender of 102 mark-sheets which are alleged to be forge and has so far been able to receive only 18.

18. Criminal investigation is ordered to be done by the CID Crime Branch, Jabalpur and let investigation be done by senior responsible officer after one month and be completed in accordance with law fixing the responsibility of the persons and also considering the report of Dr. S.M. Singh's committee and appropriate action in accordance with law; within six months from the date of order passed by this Court. The University is free to conduct the departmental enquiry against the employees/officers also as the learned Counsel for University has fairly stated that present Vice Chancellor is keen to punish the guilty incumbents in such a case, however, holding of such departmental enquiry can not come in the way of the criminal investigation into the criminal liability and investigation in such a serious offence.

19. With respect to the alternative prayer made by the petitioners' Counsel of allowing petitioner to appear in LL.B. final, petitioner has to approach the University. It is for the University to take a decision in that regard.

20. Resultantly, writ petition is dismissed with the directions to the State Bar Council to delete the name and enrolment of the petitioner from the enrolment register of Advocate maintained by it. Let enrolment be deleted forthwith. Petitioner can not practise on the basis of the said mark-sheet as an Advocate. In case he is found practising in any capacity, State Bar Council to launch criminal prosecution of the petitioner. Let an FIR be registered with police in the aforesaid manner and CID Crime Branch, Jabalpur to investigate matter. Investigation be assigned to senior responsible officer and be made in accordance with law for fixing the responsibility in issuance of fake/forged mark-sheet by the University and appropriate action in accordance with law be taken to book the culprits under the provisions of the Code of Criminal Procedure and relevant sections of the IPC. It is open to the University to conduct the departmental enquiry against the erring officials/employees and to take stern action against the persons responsible for issuing the mark-sheet. No order as to costs.