

(2005) 07 DEL CK 0034

In the Delhi High Court

Case No : Writ Petition (C) 11146 of 2005

Karan Mendiratta

APPELLANT

Vs

Dean, Faculty of Technology (Delhi University) and Others

RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:

Citation : (2005) 122 DLT 389 : (2005) 83 DRJ 710

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Valmiki Mehta and Rajnish K. Gaiind, in W.P. C 11146/2005, Sandeep Sethi and P.S. Bindra, in W.P. C No. 11815/2005 and CMs. 8750-51/2005 and W.P. C No. 11816 of 2005 and CMs. 8752-53/200 Vijay Hansaria, Adv and Meenakshi Sharma, for the Appellant;

Judgement

Vikramajit Sen, J.—These writ petitions came to be filed in this Court on noticing a sinister coincidence in the results of some candidates in respect of the Common Entrance Examination, 2005 (CEE 2005) to the B.E. Course (Bachelor of Engineering) conducted under the aegis of the Delhi University. Some of the candidates who featured high-up in the Merit List have obtained identical marks in the same subjects. At the first blush this may be considered to be a mere coincidence, but not so when it is noticed that the identical marks covered three subjects.

2. On receiving information about the possibility of an irregularity having been committed in these Examinations, and the subsequent preparation of the Merit List, the Delhi University had acted with a promptitude which is expected of premier University such as it is. The Central Bureau of Investigation has been called in. The Report of the Joint Director CBI/ACB/New Delhi dated 22/07/2005 was received by the Registrar, University of Delhi and a copy thereof has been filed for the perusal of the Court. This copy is taken on record but the Registry is directed to seal it forthwith.

3. The preliminary enquiry is predicated on the alleged complaint that five

candidates in Rank 13, three candidates in Rank 25, two candidates in Rank 36 and eleven candidates in Rank 56, secured exactly the same marks in Physics, Chemistry and Mathematics.

4. The Examination consists of 180 objective questions pertaining to these subjects and candidates were required to mark their answers in OMR sheets. The Result was declared on 13.6.2005. It would not be proper to disclose in detail what the preliminary investigations conducted by the CBI have revealed. Suffice it to state that the CBI is presently of the view that twenty one candidates along with twelve others have used unfair and illegal means to secure merit positions in the Examinations.

According to the Report of the CBI some candidates have even confessed to their complexity in cheating. The unfair means which has been used pertains to the communication of the answer keys through the use of cellular/mobile phones. This explains why identical marks were obtained by these candidates, who would have received the same answer keys from the other conspirators. CBI investigations have also revealed that question booklets containing answer keys submitted by at least twelve candidates other than those mentioned in a Regular Case RC-DAI-2005-A-0040 registered on 11.7.2005 are of a similar dubious nature. I am satisfied that there is adequate reason to prima facie come to the conclusion that thirty three candidates have used illegal means in the examination, based on the CBI Report.

5. The present case is not one where there has been a leakage of the question paper on a massive scale. Presently there is also no evidence to indicate that there was mass copying at any centre. Some of the candidates who are now under investigation had received answer keys from the prime accused. In *Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another*, it had been laid down that if it is possible to weed out the beneficiaries of irregularities or illegalities there would be no justification to cancel a recruitment process en bloc as this would inevitably deny the fruits of labour and success of other candidates without any justification.

6. So far as thirty three candidates are concerned they cannot possibly contend that they should be given an opportunity of being heard or that they have legitimate expectation consequent upon their appearing in the examinations. Even at this preliminary stage the case against them is not based on conjectures and surmises. Reliance on *Madhyamic Shiksha Mandal, M.P. Vs. Abhilash Shiksha Prasara Samiti and Others*, is, Therefore, of no avail to those persons desirous of having the entire examination scrapped since in that precedent it had been specifically noted that it was "extremely difficult for the Board to identify the innocent students from those who indulged in malpractices." These pleas were rejected in *Hanuman Prasad and Others Vs. Union of India (UOI) and Another*, . In *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, it was observed that "mention of fair-play does not come very well from the respondents who were grossly guilty of breach of fair-play themselves at the

examinations."

7. The Delhi University has , inter alia, decided to hold the admission of some candidates preliminarily found to be privy to malpractice to be kept in abeyance. I find no irregularity in this decision, infact it is to be commended.

8. These writ petitions are disposed of with the direction that the offer of admission and/or Counselling of thirty three candidates identified by the CBI to be involved in malpractices should be treated as cancelled. In the event that they are exonerated they could be considered for the subsequent years. It is further directed that if the CBI indicates the involvement of any other candidate in the present Merit List who may already have granted admission, the Delhi University would be free to consider the cancellation of their admission if evidence points to their complexity also. Those students who have adopted unfair and illegal means in their Examination would, Therefore, be best advised not to waste one academic year and pursue their studies in some other institution or course. This Court is fully aware that an onerous duty is cast not only on the CBI but also on the Delhi University. This is to do justice to all students aspiring to take up a career in Engineering on the one hand, and on the other to cancel the admission of persons only for sufficient reason.

9. Counsel for some of the Petitioners who do not feature in the Merit List of 1010 candidates has contended that a fresh examination should be held for those who have now eligible or entitled to be considered after the cancellation or holding in abeyance of the admission of thirty three students. I find no logic in this argument for the reason that the Respondents will offer/consider the next thirty three or more candidates strictly in accordance with their respective standing in the Merit List. The cancellation of admission of thirty three students will automatically result in the consideration of the next students strictly in accordance with the Merit List.

10. These writ petitions are disposed of in the above terms.

11. The parties to bear their respective costs.