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**(1997) 10 RAJ CK 0019**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 619 of 1997**

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|------------------------|----|------------|
| Miss Monika Jain       | Vs | APPELLANT  |
| The State of Rajasthan |    | RESPONDENT |

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**Date of Decision :** 23-10-1997

**Acts Referred:**

**Citation :** (1998) 1 RLW 71 : (1998) 1 WLC 301 : (1997) 2 WLN 561

**Hon'ble Judges :** B.S. Chauhan, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

B.S. Chauhan, J.—The instant petition has been filed challenging the order dated 19.12.1996 contained in Annex. 2 to this petition by which the result of the examination for B.Com. Part. 1 1996 has been cancelled and the petitioner has further been debarred from appearing in examinations for the years 1997 and 1998.

2. Petitioner was a student of B.Com. Part 1 and appealed in the examinations held in May, 1996 from the Examination Centre in PND College, Gajsinghpur, as a regular student. In the said examination, petitioner was allotted the Roll No. 56862. After the examinations were over, the result of B.Com. Part I was declared on 19.7.1996 and the same was published in the newspapers, wherein it was shown that the result of the petitioner had been withheld on the ground of using unfair means. Respondents university served a notice at 11.9.1996 contained in Annex. 1, wherein the petitioner was asked to appear before the unfair Means Standing Committee constituted by the respondent University on 30.9.1996. Petitioner appeared and was confronted with the answer books, revealing that she had used the unfair means in the examination. Her explanation was however not accepted by the Expert Committee and the Committee made a recommendation for imposing the punishment of cancelling the result of the petitioner for the examinations for the year 1996 and to debar her to appear in the examinations to be held in 1997 and 1998. In pursuance of

the same, the competent authority passed the impugned order dt. 19.12.1996 contained in Annex.2.

3. Heard S/Shri S.L. Jain, learned Counsel for the petitioner, and N.M. Lodha, learned Counsel for the respondents.

4. This Court has earlier made it clear that the petition shall be disposed of finally and so called-for the original record of the enquiry committee. In pursuance of the said order, the original record was produced by Shri Lodha before the court.

5. The averments raised by Shri S.L. Jain, learned Counsel for the petitioner, are threefold. Firstly, the conduct of the enquiry and the action taken by the respondents does not fall within the ambit of provisions of Ordinance 152 of the Hand Book of the University of Rajasthan Part II Vol. II which reads as under:

Unfair means:

(iv) Giving (or receiving) assistance in answering the question papers to (from) any other candidate/person in the examination hall or outside/during the examination hours.

(x) Using or attempting to use any other unfairmeans during the examination or in connection with the examination.

6. Secondly, the petitioner had not been accorded opportunity of hearing before passing the impugned order. Thus, the impugned order is vitiated for non-compliance of the principles of natural justice. Petitioner was not given the copies of the material on the basis of which allegation of using unfair means had been made; and thirdly, the competent authorities had not passed the impugned order and, therefore, it is without any jurisdiction and, thus, illegal.

7. So far as the third contention is concerned, it has no force. As per the procedure laid down in the University, cases of unfair means are required to be considered by the Committee constituted for dealing the matters relating to unfair means used in the examination and on the recommendations of the Committee, a punishment is inflicted. In the present case also, the Committee considered the matter and made recommendation and on the basis of that, Annex. 2 was passed. In such circumstances, the order contained in Annex.2 does not suffer from any infirmity or illegality. Similarly first contention is also preposterous as the case of using unfair means definitely falls within the ambit of provisions of said Ordinance 152. Only second submission requires consideration. In fact, the original record produced by respondents reveals that the petitioner and her real brother Nitin K. Jain had appeared in the examination and her brother was allotted Roll No. 56863. During the examination, they had been sitting next to each other as petitioner's Roll No. was 56862. They both appeared in the same paper i.e. B.Com. Part I Business Administration (Merchantile Law) on 23.5.1996. Result of both of them had been withheld and they both appeared before the said committee on 30.9.1996. When the committee asked her brother to furnish explanation, he made a categorical

statement on 30.9.1996 to the effect that the petitioner was his real sister and she was sitting next to him in the examination hall and the answer to the question No. 5 (ii) and (iii) were exactly the same. However, he made a confession that he had copied from her answer book. Petitioner was also shown both the answer books by committee on 30.9.1996 and was confronted how her answers to question No. 5 (ii) and (iii) had been verbatim to the answer book of her brother. She replied that her brother was sitting just before her in the examination hall on 23.5.1996. She had prepared notes for the examination and her brother prepared for the examinations from the same notes. Therefore, there was a possibility of the similarity in the answer books. It may be pertinent to point out here that the answer to question No. 5 (ii) and (iii) relating to law of Agency are not merely similar but had been taken verbatim. There is no difference even of a comma or full stop except that the petitioner had left the last few lines which had been written by her brother. As the answer books of the petitioner and her brother had been shown and the relevant answers had been read over to the petitioner and her brother separately, it cannot be said, by any stretch of imagination, that the compliance of principles of natural justice or doctrine of audi alteram partem has not been complied-with. The committee has to adopt a just, fair and reasonable procedure to meet the requirement of law and if the original answer books had been shown and the petitioner and her brother had been confronted by the relevant part of the answer books, it is irrelevant to argue that the petitioner did not get a fair opportunity to defend herself.

8. Shri S.L. Jain has relied upon the judgment of the Hon'ble Supreme Court in Board of Technical Education, U.P. and others Vs. Dhanwantri Kumar and others, wherein it has been held that if the notice was vague and imprecise and it was not possible for the student to defend himself effectively in the course of an enquiry, the order of punishment stands vitiated. He further placed reliance on judgment in the case of Keshav Prasad Yadav Vs. Banaras Hindu University and others, wherein it has been held that it is mandatory that the material on the basis of which the University wants to proceed against the student alleged to have used unfairmeans, has to be supplied to him. If the supporting material has not been supplied, then enquiry becomes bad. The aforesaid judgments are of no help to petitioner as in the instant case, the petitioner had been confronted with the original answer books written by her and her brother and she was not able to explain as to how the answers to a particular question No. 5 (ii) and (iii) had been verbatim and in view of the particular fact that her brother had admitted of using unfairmeans with the petitioner, it cannot be said that the material on the basis of which the respondent University passed the impugned order contained in Annex. 2 had not been supplied or shown to the petitioner.

9. In Guru Nanak Dev University and another Vs. Harjinder Singh and another, the Apex Court has held that if the expert Committee after examining the entire record and comparing the answer books, comes to the conclusion of using unfairmeans, the order of punishment cannot be challenged on technical grounds

i.e. non-recovery of incriminating material etc. and, as such, submissions/contentions are of no consequence.

10. A Constitution Bench of the. Supreme Court in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, has held that in academic matters, where the decision under challenge, has been taken by the Committee of Expert "normally the courts should be slow to interfere with the opinion expressed by the experts" unless there are allegations of malafide against any of the members of the Expert Committee. The Court further observed as under:

... It would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than courts..

11. Similar view has been expressed by the Hon"ble Supreme Court in *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*,

12. Raising technical questions of non-compliance of the principles of natural justice are of no use unless a party satisfies the court that the cause of the petitioner has been materially prejudiced for want of such compliance as the validity of the order has to be tested on the touchstone of prejudice. (Vide *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, *State Bank of Patiala and others Vs. S.K. Sharma*, ; *Major G.S. Sodhi Vs. Union of India (UOI)*, and *S.K. Singh Vs. Central Bank of India and Others*,

13. In the instant case after examining the original record, I am of the considered opinion that it is a clear case of using unfair means and the punishment imposed by the University is too lenient particularly in view of the factual situation revealed by original record. In the examination hall, room No. 15, there were two invigilators on 23.5.1996. It was their duty to sign the answer books distributed to the examinees. The answer books of the petitioner, her brother and three other examinees purported to have been signed by one of the invigilators Shri Gurjan Singh. Both the invigilators were called by the Committee and their statements were recorded on 19.11.1996. One of the invigilators Dr. S.C. Gupta made a statement that he did not sign the answer books submitted by the petitioner, her brother and three other students. However, Shri Gurjan Singh while replying to the question No. 4 put to him by the Committee made a categorical statement that the signatures on the answer books of five candidates including the petitioner and her brother had not been made by him and the same bore the forged signatures. It makes it further clear that the answer books submitted by the petitioner, her brother and three other examinees were not the same which had been given to them in the examination hall. The said answer books had been changed at any stage. This is a very serious matter and University ought to have taken a serious view of the matter and lodged a criminal prosecution against the petitioner and others. However, the University had to decide the action to be taken in such a case.

14. In view of the aforesaid, I do not find any merit in the petition and, as such,

the same is hereby dismissed with costs, which is quantified at Rs. One thousand.