

(2008) 02 GUJ CK 0038

In the Gujarat High Court

Case No : Special Civil Application No's. 30729, 30730, 30731, 30732, 30763, 30764, 30765, 30766 of 2007 and Special Civil Application No. 1900 of 2008

Patel Neha Dilipbhai

APPELLANT

Vs

Veer Narmad South Gujarat University and Another

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Citation : (2008) 02 GUJ CK 0038

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : K.B. Pujara, for the Appellant; D.C. Dave, for Respondents 1 - 2, for the Respondent

Judgement

Jayant Patel, J.—Rule. Mr. Dave learned Counsel appears for the University and the Head of the Department of the University concerned and Mr. Manan Shah learned Counsel appears for respondent No. 2, in Special Civil Application No. 30764 of 2007, and waives service of notice of rule. With the consent of the learned Counsel appears for both the sides, the matter is finally heard today.

2. The facts under consideration are more or less common and the common question arise for consideration, and therefore they are being considered by this common judgment.

3. The facts relevant for the purpose of this petition are that all the petitioners were prosecuting studies in the subject of M.Sc. Part-I, and they appeared in the examination conducted by the respondent- University, the mark-sheets came to be issued for the declaration of the result, and in the said result declared all the petitioners were shown as passed the examination with the marks assigned in the mark-sheets, except petitioner of Special Civil Application No. 30766/2007, who was declared fail. The University after issuance of the mark-sheets, received information that, there is something wrong with the mark-sheets issued inasmuch as students have not scored mark as assigned by the examiner in the

answer-sheet, but different marks are recorded in the mark-sheets. The Same led to the inquiry by the University, the matter was assigned to examination conduct committee, and ultimately it was found by the examination conduct committee that, there was substance in the information, and the marks mentioned in the mark-sheets, which were issued to the concerned petitioner in certain subjects, were different than the actual mark assigned by the examiner in the answer-sheet. The committee therefore, recommended for cancellation of the result, and also observed that, if the students have taken admission based on the mark-sheet, same also be cancelled.

4. It appears that thereafter, the matter was considered by the Syndicate of the University and having considered report of the committee, the report is accepted, and results are cancelled, and all the petitioners are debarred in any University for study for five years, and it is under this circumstances, the petitioners have approached to this Court by preferring the present petitions.

5. Heard Mr. Pujara learned Counsel for the petitioner Mr. Dave learned Counsel for the University and the concerned Head of the Department of the University who are joined as the respondent in the respective petitions and Mr. Shah for the college in one of the petition.

6. It was contended by the learned Counsel appearing for the petitioners that the decision has been taken on the basis without there being any evidence whatsoever, nor any opportunity of hearing has been given to the petitioner concerned by the committee, or by the University before the impugned decision is taken. Whereas on behalf of the University it has been submitted that the petitioner concerned was called for hearing, not only that but they are interrogated. The inquiry was made by the committee and thereafter, the committee on the basis of the material available on record recommended for cancellation of the result, and cancellation of the admission based on the so-called mark-sheets and the Syndicate has passed an order for imposition of the punishment for debarring the petitioner concerned for five years. It was submitted that the mark-sheets are issued showing the additional marks in various subjects to each of the petitioners than marks actually granted by the examiner in the concerned answer-sheet, is sufficient to conclude that there is mischief and the petitioner concerned are the beneficiary of such mischief. It was also submitted by Mr. Dave learned Counsel for the respondent that criminal complaints were filed, and the police was to investigate. At that stage one of the person Mr. Vimal Zariwala, who is programmer in computer examination center of the University, had preferred an application for anticipatory bail, which was not granted and this Court also did not grant it, but that person is absconding and therefore, the investigation has not proceeded further. He therefore submitted that the decision taken, which is impugned in the present petition cannot be said without there being any material, and the punishment imposed by the Syndicate is just and proper. Mr. Dave learned Counsel for the respondent University during the course of the hearing has placed the details subject-wise the marks actual

assigned by the examiner to the concerned petitioner, and the marks shown in the mark-sheets and he submitted that the original answer-sheet, if the petitioners are desirous, can also be shown to the petitioners. There is no denial to statement which is produced by the University during the course of the hearing.

7. The details which has been given by the University qua each of the petitioner showing the difference between the marks assigned by the examiner in the answer-sheet, and the marks mentioned in the mark-sheet issued, for ready reference reads as under:

Sr.No. Name of Seat No. Paper Marks assigned by Set1 Set2 the Students the Examiner Marks shows Marks shows with Concerned (As per in the in the mark- Petition answer-sheet) mark-sheet sheet of concerned the student

1. Aahir SCA No. P-1 00 + 00 =00 30 30 Chetankumar 30766 of P-2 00 + 01 =01 30 30 Dahyabhai. 2007 0028

2. Gandhi SCA No. P-1 07 + 17 =24 34 34 Jenifar 30764 of P-2 10 + 15 =25 30 30 Jagdish- 2007 0151 P-3 00 + 09 =09 30 30 chandra.

3. Patel SCA No. P-1 03 + 04 =07 32 32 Hemant 30765 of P-2 00 + 17 =17 29 29 Kumar 2007 0288 P-3 03 + 01 =04 28 28 Dhirubhai. P-4 01 + 00 =01 28 28

4. Patel SCA P-3 05 + 12 =17 30 30 Mehul 30763 of P-4 12 + 10 =22 32 32 Kumar 2007 0312 Pravinbhai

5. Patel SCA No. P-1 10 + 07 =17 31 31 Mehul 30732 of P-2 05 + 12 =20 30 30 Kumar 2007 0313 P-3 13 + 06 =19 31 31 Yashvantbhai P-4 10 + 13 =23 32 32

6. Patel SCA No. P-1 07 + 00 =07 27 27 Mitesh 30731 of P-2 00 + 04 =04 29 29 Babubhai 2008 0314 P-3 00 + 02 =02 31 31 P-4 00 + 06 =06 32 32

7. Patel SCA No. P-1 07 + 17 =24 29 29 Sunil 1900 of P-2 13 + 09 =22 27 27 Mahendra- 2008 0327 P-3 00 + 07 =07 28 28 Bhai P-4 07 + 00 =07 33 33

8. Rathod SCA No. P-1 06 + 07 =13 33 33 Jiten 30723 of P-2 10 + 09 =19 30 30 Ashvinbhai 2007 0345 P-3 07 + 08 =15 26 26 P-4 10 + 12 =22 30 30

9. Patel SCA No. P-1 00 + 05 =05 34 34 Neha 30729 of P-2 01 + 06 =07 32 32 Dilipbhai 2007 0564 P-3 01 + 04 =05 30 30

8. If the aforesaid details are considered with the proceedings of the examination conduct committee, copy whereof is produced on page 103 to 108, it appears that the students have pleaded ignorance. However, the pertinent aspect is that it is not a matter, where that in one subject such error of marks by feeding in the computer had crept, nor it appears that it is a case of making error while putting data into the computer. It appears that it is a case, where the examiner has assigned marks, which are not correctly entered in the result-sheet and therefore, in the mark-sheet issued the different marks are shown. Had it been a

case, where for a single paper in case of each petitioner, such mistake had created that too by apparent human error, it may stand on different footing, but the details produced hereinabove show that, it is more than two to four answer sheets of each student, and that in two internal sets of answer-sheets, there are different marks mentioned in the result-sheet than actually assigned by the examiner. The mistake in certain cases is to the extent that, the examiner has assigned zero marks which are shown in the result-sheet as 30, 1 mark is also shown in the result-sheet as 30, 9 marks is shown in the result-sheet as 30 and various such instances, which can be considered from the aforesaid details. Therefore, if the details are considered with the normal prudence, it is unbelievable that, such could happen by any human error without any purpose whatsoever. The strongest circumstance is that, the variance to a great extent is in more than 2 to 4 subjects, and that too in each two sets of answer-sheets. If such cannot be said as human error applying the test of normal prudence, it would be reasonable to say that such manipulation in the record in the result-sheet is intentional, or may be with extraneous consideration. The petitioners concerned, who are students, are directly beneficiaries of such so-called manipulation in the result-sheet, may be through the staff of the University.

9. Therefore, under these circumstances, it will be difficult to record the conclusion that students have directly or indirectly, not at all, played a role in the benefit to be received on account of the alleged manipulated mark-sheet. It is true that no material was before the committee, to directly show the link by the students with the staff of the University, who played a role in such manipulation, but at the same time when the students concerned are directly beneficiaries, and keeping in view the facts and circumstances that, such manipulation in the result-sheet is for more than one subject, and within one subject in more than two sets of answer-sheets, it cannot be said a case of no evidence whatsoever for unfair means applied in the examination. It may be stated that for assessing the scope of the unfair means during the examination, the restricted meaning as sought to be canvassed on behalf of the petitioner cannot be accepted. Such scope would include all steps, which are incidentally required for the examination, until the mark-sheets are issued, so as to maintain a free, fair and transparent atmosphere in the examination, which are being conducted by the University. If at any stage, the student concerned directly, or indirectly, attempts to inroad in the system, so as to extract any undue advantage/benefit thereof, such can be said as unfair means applied by the students. Therefore, even if the manipulation has taken place in the result-sheets, but if it is demonstrated that the same is beyond the scope of the human error applying the test of normal prudence, and the students are the direct beneficiaries of the same, at least it will not be the case to conclude that, there is no unfair means whatsoever applied.

10. The University in a case, where unfair means are applied by the students, may have power to punish, but it is by now well settled that, the authority who has power to punish, should apply the mind on the aspect of proportionality of the punishment also. Keeping in view the facts and circumstances of the case, if

the gross case is found with the cogent and uncontroverted evidence on record, the maximum punishment prescribed can also be imposed upon the student concerned, but if it is in the realm probabilities to the extent of involvement, or the degree of involvement is difficult to be ascertained, though the direct benefit is extracted thereof, the University may take lenient view and may impose punishment appropriately. Therefore, until such aspects are considered, and the decision is recorded by application of mind, on the aspect of proportionality of punishment, the imposition of the punishment to the fullest extent cannot be sustained in the eye of law. The perusal of the order passed by the Syndicate for debarring the petitioner concerned for a period of five years by way of punishment shows that, there is absolutely no application of mind on the said aspect and the order is non-speaking order. The aforesaid is coupled with the circumstance that, even on the aspect of proportionality of the punishment, it would be required by the authority, who has power to punish, to observe the principle of natural justice, by giving opportunity of hearing to the person concerned, upon whom the punishment is to be imposed. If the power of final decision vest to the Syndicate to impose punishment, such Syndicate itself may give opportunity of hearing or the committee who may be assigned such work being the member of the Syndicate can give opportunity of hearing and report thereof can be considered by the Syndicate at the time of taking final decision on the aspect of punishment. Such appears to have also not been considered by the University in the present case. On the contrary it is an admitted position that the examination committee has not recommended any punishment for debarring to the student concerned and upon the report of examination conduct committee, the Syndicate has imposed the punishment without giving any opportunity of hearing whatsoever to the student concerned on the aspect of punishment, either by the Syndicate itself or through committee assigned for such purpose. Therefore, the order for imposition of punishment for a period of five years can be said as not only in breach of the principle of natural justice, but it can also be said as without proper application of mind on the aspect of proportionality of the punishment.

11. In any case the petitioner validly cannot be maintained the contention that the mark-sheets issued on the manipulated record must be allowed to operate and the same cannot be cancelled or the result cannot be declared based on the actual marks assigned by the examiner in the answer-sheet. If the data which are reproduced hereinabove are considered, it is apparent that all the petitioners have not scored the minimum passing marks in the concerned subject, but different marks are assigned. Therefore, the mark-sheet which is issued by the University in any case is required to be cancelled, since it is not reflecting the correct marks scored by the petitioner concerned. It is only after the correction and the decision by the University on the aspect of punishment, the University will have to take appropriate decision as to whether the mark-sheet should be issued with the correction in the event no punishment is imposed and if the punishment is imposed, the result in toto will be required cancelled with the

debarring for the appropriate period as the University may find it proper.

12. In view of the above, in any case the petitioners who have secured admission based on the so-called mark-sheet, cannot be allowed to prosecute study, or any admission based on such marks not reflecting the correct marks, is required to be cancelled and such action of the University to that extent cannot be said as illegal or arbitrary.

13. In view of the above, following order:

1. The decision of the University for cancellation of the mark-sheet is not interfered with and is found as legal and valid.

2. The order of the University for imposition of the punishment for debarring for a period of five years is quashed and set aside on condition that the petitioners deposits the original mark-sheets with the University and with the further direction that the matter shall stands restored on the aspect of imposition of punishment to the University and the University shall either itself or through authorised committee after giving an opportunity of hearing to the petitioner concerned, shall pass appropriate orders, keeping in view of observations made hereinabove and in accordance with law, preferably within a period of two months from the receipt of the order of this Court.

3. It is made clear that at the time when the opportunity of hearing given to petitioners, the petitioners shall be at the liberty to have an inspection of the original answer-sheet for the verification of the marks assigned by the examiner.

14. The petitions are partly allowed to the aforesaid extent. Rule is made absolute to that extent. Direct service is permitted.