
(2010) 02 DEL CK 0069
In the Delhi High Court
Case No : LPA 580 of 2009

Pranshu S Raghuvansh

APPELLANT

Vs

Indraprastha Institute of Information Technology

RESPONDENT

Date of Decision : 19-02-2010

Acts Referred:

Citation : (2010) 167 DLT 531

Hon'ble Judges : Madan B. Lokur, Acting C.J.; Mukta Gupta, J

Bench : Division Bench

Advocate : Vikram Singh and Bham Pant, for the Appellant; Raghu Nayyar and V.K. Tandon, for the Respondent

Judgement

Mukta Gupta, J.—The Appellant, a student of B.Tech Course (Information Technology) in Indraprastha Institute of Information Technology was studying in the second year of the said course. On 23rd April, 2009 the Appellant along with two of his friends stayed back in the hostel for preparation of the ongoing exams. However, on the said late evening/night Ishaan, Shashank and the Appellant went to the pool room and then to the computer room. It is the case of the Respondents that Ishaan took the question paper of Theory of Computation (TOC) which was to be conducted on 24th April, 2009 by unauthorisedly accessing the electronic/other records in the room of Dr. Astrid, Academic Coordinator of the Exams. Ishaan gave the question paper to Shashank who copied the same and the Appellant stood there watching their activities. Ishaan also tampered with the electronic data of the academic coordinator. On discovery of the incident when the erring students were called on 25th April, 2009 they gave their written statement in their own handwriting. The statement dated 25th April, 2009 of the Appellant is reproduced:

We entered the IIIT premises around 10.30 pm. After that I was in the pool room. Ishaan & Shashank entered the room opening the window using the AC window. Shashank found the paper he brought it to the chairs copied it and Ishaan still was in the room searching Astrid Ma'am's laptop, then Shashank

copied the paper and Ishaan closed the room and we came back. And I was near the window when Ishaan started printing.

As told by Ishaan,

When Ishaan was using the laptop he tried to print some scores, but the printer was out of paper and he gave the cancel command and shut down the laptop.

I never entered the room, and was not involved in tampering the marks.

Sd/-

(Pranshu S. Raghuvansh)

2. Subsequently, the Appellant was called to the Emergency Senate on 28th April, 2009 where he tendered a prepared written statement which is reproduced as under:

The day before TOC paper i.e. on 23rd April, 2009 I came to the hostel for preparation. By evening I had covered most of the topics. Ishaan came to me and asked whether I was prepared for the paper, I told him that I had prepared for 60- 70%. Then Ishaan, suggested that we should go to IIIT to play pool or counter strike. When we (Ishaan, Shashank & me) entered IIIT (around 10.30 pm), the guard stopped Ishaan for entry. I went forward to the pool room to set the balls, from the pool room window I noticed Ishaan opening and entering the window of Astrid madam's room, Shashank was standing at the window, I was surprised and puzzled at this action. Ishaan gave some paper to Shashank and Shashank took the paper to the chairs in front of the classes. Seeing this I left the pool room & when I reached there I found that it was the next day's TOC paper. I was simply shocked to see this.

After some time I said I heard something on the roof and excused myself from the place. I went to the roof and started thinking about what was happening. Then I came back and told them that it was nothing. When I returned I saw that Ishaan was still in the room doing something in Astrid madam's Laptop. I asked Ishaan through the door what he was doing but he couldn't hear me, so I went to the window to ask him what he was doing, then I saw that he was printing out something (some kind of table), then he hastily shut down the computer and came out of the room with printout. When Shashank copied the paper he returned it to Ishaan who put it back into the room. Then I insisted them to leave the place and after that we returned back to hostel.

On the way back to the hostel I realized that they have come to IIITD with some ulterior motive and I was also made a part of something serious unknowingly, only way out of this was to report the matter to the authorities, which I never had the guts to do. I decided not to see the questions or their answers and do my best on my own. If the questions were known to me I would have attempted all the questions of the paper. It may be confirmed from my answer sheet.

As far as changing of marks I didn't even know about it and it came to my

knowledge during the investigation on 25th April. As I never entered the room, I was neither a party to paper incidence nor marks changing. It may be confirmed from the records. I have been a good student and I don't need to do such type of things. In first semester theory examination I had secured 159 marks (out of 290) and was placed at 5th position. This can be checked from records, for ready reference I am attaching the list mailed to me.

I would like to summarise my submission as follows:

1. I was not aware of the intentions and I went there only to play pool.
2. I never entered in the room and was only confined to the public area, entry to which is allowed.
3. I was not involved in leakage and copying of question paper and its answer.
4. I have not altered my scores in any record i.e. have not tampered with the records.
5. I had no prior knowledge of question or their answers.

In light of my above submission I humbly request you to kindly consider my case judiciously on the basis of facts stated by me. I have not done any dishonesty either academic or otherwise. Therefore, charges framed against me, if any, may be withdrawn and I must be allowed to sit in written and practical examination.

3. In the emergency meeting of the Senate the case of Appellant and two others was considered on 28th April, 2009 which recommended the expulsion of the three students that is Appellant Pranshu S. Raghuvansh, Ishaan and Shashank, but before expulsion it was decided to give the students an option to withdraw. Ishaan and Shashank withdrew. However, the Appellant filed a writ petition being WP(C) No. 8680/2009 before this Court wherein this Court issued notice to the Respondents. As no interim orders were passed in favour of the Appellant, the said order dated 1st May, 2009 passed by the learned Single Judge of this Court was challenged by the Appellant herein by filing LPA No. 207/2009 which was disposed of on 12th May, 2009 with the following directions:

During the course of hearing, both the parties fairly agreed to the disposal of the petition with the direction that the Senate of the respondent Institute would give show-cause notice to the appellant and thereafter, after hearing the appellant and considering his representation pass a reasoned order in the matter. Accordingly, we direct the respondent Institute to give a show-cause notice to the appellant setting out the charges against him within one week from today. It would be open to the appellant to file his reply within one week thereafter. The matter would thereafter be considered by the Senate and after giving a hearing to the appellant, the Senate will pass a reasoned speaking order within a period of two weeks thereafter. In view of the same, the expulsion order passed against the appellant is set aside. However, it is clarified that the setting aside of the expulsion order is not an expression on the merit of the matter. The respondent

Institute is entitled to take a decision in the matter in accordance with law.

4. Pursuant to the order dated 12th May, 2009 of this Court, the Senate served a charge sheet dated 22nd May, 2009 on the Appellant with the following allegations:

Show Cause Notice

Sh. Pranshu Raghuvansh had taken admission in B.Tech (IT) in Indraprastha Institute of Information Technology (IIIT) Delhi in Aug 2008 during the academic session 2008-09. The roll No. allotted to him is 2008038. Mr. Pranshu is served with following charges:

1. Whereas Mr. Pranshu is a day scholar but stayed in hostel for late hours on April, 23rd night without taking any permission to do so.

2. Whereas the group consisting of Mr. Pranshu and two others, namely Mr. Ishaan Maurya, roll No. 2008027, Mr. Shashank, roll No. 2008048 (hereafter also called the group), was involved in a conspiracy to commit, and committed, a very severe act of academic indiscipline and dishonest:

i. The group entered the IIITD campus in night around 10.30 pm on April, 23, 2009, with one member of the group signing a false name and other members entering without signing at all, with the intent of illegally accessing the question paper of the Theory of Computing course, and then copying it. During the execution of this plan some members of the group illegally entered into the room of the faculty members who also has been coordinating the academic activities, some members remained outside keeping an eye on these proceedings, and some members of the group helped in copying the paper.

ii. The group tampered/alterd academic records in the file maintained by the faculty member-some members of the group actually altered the record, while the rest kept an eye on the proceedings, providing security and support.

iii. The group altered electronic records maintained in the PC of the concerned faculty member-some members of the group made the changes, while the rest of the group kept an eye on the proceedings.

iv. The group illegally took print out of some files from the faculty member's laptop-some members of the group gave the print command, and some handled/carried the printouts.

3. Whereas Mr. Pranshu helped in covering the above serious violations by hiding information about these serious indiscipline acts from the concerned authorities, and also by complimenting the security guard for facilitating the above acts and not identifying the members the group in front of the Institute authorities.

Mr. Pranshu is hereby served the above charges with show cause as to why necessary disciplinary action, which may include expulsion from the institute, should not be taken against him for these severe acts of academic indiscipline

and committing offense, particularly in the light of the background that he was involved along with Mr. Ishaan in another serious act of academic indiscipline and dishonesty in Jan 2009, pertaining to impersonation in an exam, to which he admitted in writing and for which he was issued a warning. He may explain his position in writing within one week of this notice, failing which the above charges will be assumed to be true. This charge sheet along with the responses will be deliberated upon by the Senate. For these deliberations, he may be requested to be present in the Institute in case the Senate requires any further information/clarifications. The date of senate meeting will be duly informed.

Sd/-

Registrar and Secretary to the Senate.

IIIT DELHI.

5. The Appellant submitted his reply to the said show cause notice and was given an oral hearing. Considering the reply and oral submissions of the Appellant, the Senate deliberated on the matter on 1st July, 2009 and recorded its conclusion in the minutes. The minutes of the Senate dated 1st July, 2009 are reproduced as under:

Relevant portion of the Minutes of the Senate Meeting held on July, 1, 2009, 3 pm in IIIT Delhi.

Member Present:

Prof. Pankaj Jalote, Director, IIIT Delhi, Chairman

Dr. A. Subramanian, Registrar, IIIT Delhi, Secretary (non- voting)

Dr. Veena Bansal, Faculty, IIIT Delhi

Dr. Astrid Kiehn, Faculty, IIIT Delhi

Dr. Mayank Vatsa, Faculty, IIIT Delhi

Dr. Richa Singh, Faculty, IIIT Delhi

Dr. Vikram Goyal, Faculty, IIIT Delhi

Mr. Sunpreet Arora, Student member, IIIT Delhi

Mr. Saurav Maitra, Student member, IIIT Delhi.

Dr. Saugat Sen, Cadence.

Members Present through Audio Conferencing

Prof. Kamal Karnapalam, IIIT Hyderabad.

Prof. Rajat Moona, Indian Institute of Technology (IIT) Kanpur.

Prof. Prem Kalra, Indian Institute of Technology (IIT) Delhi.

Dr. C. Anantram, TCS,

Dr. Manish Gupta, Associate Director, IBM IRL.

Dr. Pawan Goel, Adobe Systems, Noida.

Item: To consider the disciplinary case against Mr. Pranshu Raghuvash

[Documents sent to Senate members earlier: Show cause notices; their replies; the minutes of the disciplinary committee meeting; the background note; statements of Shashank and Pranshu given to the Senate; Statements of Ishaan, Pranshu, and Shashank given earlier, statement of Honey; the High Court order.]

The Senate Chairman (the Director of IIITD) first explained the situation. He informed about the order passed by the Hon. High court laying a process to be followed by the Senate, which is being followed. As part of this process, a written charge sheet was given to Mr. Pranshu Raghuvansh (dated: May 22, 2009), to which he sent a written reply (dated: June 23, 2009). The charge sheet, the reply, and other documents including the statements of students and earlier recommendation of the disciplinary committee, have been sent to the entire Senate. Based on all the facts, as per the Hon Court's order, the Senate has been requested to give a reasoned order.

He further requested the Senate that in keeping with the spirit of the Hon Court's judgment, the case should be considered afresh. He also requested the Senate not to be weighed down by the possibility of further litigation, but act as it sees appropriate, in a free and fair manner. He further requested the Senate to first discuss the extent of the indiscipline involved, and thereafter discuss the quantum of punishment, if any, to be given.

In response to some of the points made in the reply, the Registrar informed the Senate (i) that Academic Institutions have inherent powers to enforce and maintain discipline in academic matters, and IIIT-D also has these powers to take necessary actions to maintain discipline (Statute -7(3), 21 (2)), (ii) Necessary steps were taken a few weeks ago with regard to the security agency and the guard. (iii) The joint statement of Ishaan and Shashank was not sent, as they had given separate statements later after admitting that they had not explained the complete picture earlier (in any case, this document was already available to Mr. Pranshu from earlier proceedings).

During the course of discussions, Mr. Pranshu was invited to the Senate meeting. He made some statements to the Senate (which he also submitted in written form). Mr. Shashank was also invited and he stated that he has nothing more to add beyond his written submission. Mr. Ishaan, even though he was issued a show-cause notice and asked to be present for the Senate meeting, neither sent a reply nor was present, even though the show-cause notice clearly stated that if he does not reply within a week, the charges will be assumed to be true (It should be pointed out that after receiving the show cause notice, he did ask for documents based on which the charges were made, and these were provided to

him).

After a discussion, the following conclusions were reached:

1. It is clearly established through various statements and evidences that two major acts of indiscipline, both extremely serious, were committed on the night of April 23rd 2009:

i. An illegal entry was made into Ms. Astrid's room, and a question paper for the exam was obtained. Not only do the students involved in the act admit to this, Mr. Honey Singla's statement also shows that Ishaan knew some exam questions on the night of 23rd.

ii. Academic records were altered-both in the hard copy folder maintained, as well as the electronic file in the laptop of Ms. Astrid. The actual records show this, and statements of Ishaan and Shashank also established it.

2. Mr. Pranshu was knowingly a part of the group that planned and committed the act of illegally entering the room of Ms. Astrid's and obtaining the question paper (their "common cause"). This is established on the following grounds:

a. Shashank had said that Ishaan informed him and Pranshu after meeting Ms. Astrid around 3.30 pm that "we can access TOC exam paper as he has some mutual understanding with the security guard of the night shift...and we mildly accepted but in a light way what he was saying" (Ishaan says that the "guard was known to all three of us"). So, it is clear that a plan was hatched early in the afternoon for the acts done in the night, and Pranshu very much knew about it. (Ishaan, in fact, states that Pranshu participated actively and entered the room and tampered the records along with him). It may be noted that Pranshu is not a resident of the hostel but was present in the hostel on the said night.

b. In the initial statements given by Pranshu, Shashank, and Ishaan there is no mention of "going to IIITD to play pool". And this was not suggested even in the interactions during Sat and Mon (25th and 27th). This "purpose" is stated first in the written statements submitted to the first Senate meeting on the evening of April, 28, clearly suggesting that it is an afterthought and an attempt to escape the consequences of their acts.

c. At no point in their statements or in interactions did Shashank and Ishaan indicate that Pranshu was just an "innocent bystander". If there was an innocent man getting caught, surely his friends (which they were, even according to Pranshu) will try to help him so he does not get punished!

d. In general, the reasonable response of an intelligent person who is not involved in an act as serious as this would be to leave the place immediately, and report it to the right authorities. This holds even more here since Pranshu was already under warning from the Institute for an act of indiscipline and academic dishonesty. Pranshu did neither-he stayed in the building till the end and finally left with the group about 2 hours later (during which the room was illegally

entered into, the paper was stolen, the paper was copied by hand, record were changed, printing of records was tried, etc.). This again shows that he was very much a part of the group.

e. It was said in the court documents that Pranshu "...saw the conduct of the students, he went to the guard of the Institute and informed him but he was indifferent". But the guard mentions no such reporting by Pranshu in his statement (and denied it during interactions). If he had reported the incident to the guard, even though the guard was indifferent (as Pranshu claims), Pranshu could not have assumed that the guard will not report it to the authorities, and so the natural thing expected of him was to report it to the Institute authorities the same night (e.g. by sending an email) or early next day, particularly if he was not involved. The fact that he made no such attempt, even after it was announced in the class that the break-in has been discovered, indicates that he was very much a part of the act, and not an innocent bystander who tried to stop the serious act, as he claims.

f. It is evident that Ishaan had planned this act early in the afternoon and came in the night to execute his plan-otherwise he (both Shashank and Pranshu claim that he signed) will have no reason to sign a fake name in the two night entry registers. Since he came with the intent of "accessing the TOC paper", he would do everything possible to ensure that there are no witnesses and will clearly not want to bring witnesses along- and according to Pranshu "Ishaan suggested that we go to play pool..." Furthermore, if an "innocent bystander" is witnessing a crime, how can the person committing the crime be so sure that the witness will not report the crime. As Pranshu's statement does not indicate any coercion/threat from Ishaan to keep silent, it is clear Ishaan was certain that Pranshu will not say anything- this kind of confidence can be there only if Pranshu was a "partner in crime".

g. One cannot loose sight of the fact that the present incident is second offence committed by Pranshu and Ishaan. From the incident of indiscipline in Jan 2009 it is already known that Pranshu is willing to use dishonest means to help his friend Ishaan, even when he himself has nothing to benefit from it. As per Pranshu's confession: "I, Pranshu, went to the exam...to help my friend Ishaan. We planned that we sit close but Goel Sir made me sit away from him. Finally, when paper ended...we decided...that I should give my paper with his name". This whole plan was clearly to help Ishaan, as Pranshu, even after getting a 0 in that test, passed comfortably and got a B grade. So, he clearly seems to be inclined and willing to help Ishaan even by participating in acts of sever indiscipline/academic dishonesty where he has nothing to gain. (For this act, as a concession/leniency he (and Ishaan) was only placed under Warning. It is sad to note that this same concession/leniency is now being twisted to suggest that it was a minor act.)

h. The fact that Pranshu did not attempt some questions only shows that he could not figure out how to answer them. Even Ishaan did not attempt all

questions. Answering the question, even if known, requires knowledge and skill, particularly since one cannot go to anyone else to get the solutions, that too at the last minute.

3. On Friday afternoon, Pranshu, along with three others, went to meet the guard at Dwarka Mor and complimented/thanked him for not identifying the group earlier in the day when Institute authorities had taken the guard to the hostel. The guard has stated this clearly in his written statement (dated May 02). This was a clear attempt to cover up their acts.

4. Though academic performance is not relevant while discussing such acts of indiscipline/dishonesty, it may be mentioned that Pranshu is not as good a student as he claims -in the Discrete Maths course (which he refers to as theory course in first semester), he stood 20 (and not 5th as he has claimed in court documents), and overall in the first semester there are 16 students with a higher SGPA than his. In the Winter 2009 semester his performance was not good (in midsem of TOC he got 5 marks out of max of 20). In the summer term he claims he is "ranked first". However, this is not true, and it should be noted that the students in this summer term are those who failed the subject earlier.

5. However, it could not be established with a reasonable certainty that Mr. Pranshu was directly involved in tampering of academic records (though Ishaan's statement says that he was involved in that also, the same is not corroborated by statements of Shashank, who only refers to Pranshu's involvement in this as hearsay). Further, "staying in the hostel without permission" is a minor offense, and as such the Senate felt that there is no point in deliberating on it further.

6. Such an audacious act of indiscipline/academic dishonesty has not been committed in Institutes like IIT Kanpur, IIT Delhi, and IIIT Hyderabad in the last many years, (as has been informed by Senate members from these Institutes). There does not seem to be any act of indiscipline in an academic institute that is worse than this. Participating in such an act clearly deserves severe punishment that is appropriate for this type of act. By not severely punishing such an act, the Senate will not be discharging its responsibilities properly, as it will only embolden other students to venture into such acts, and demoralize the faculty- this act has already created a fear among the faculty and many are now keeping academic and official records elsewhere.

7. During the discussion on quantum of punishment, a suspension of one year was considered. However, most Senate members felt that a one year expulsion is an appropriate punishment for less serious violations than this, like copying in the exam etc. (indeed, some senate members remembered reading about a case where a student was suspended for one year for having a chit with notes in his pocket during the exam). It was felt that if such a serious act of indiscipline is not given a much stricter punishment, then the institute will lose its ability to give appropriate punishment to other "less serious" acts of academic indiscipline,

as this case will be quoted by students in future.

8. In view of the above the entire Senate (with one dissension) agreed that the following punishment is just and fair for Mr. Pranshu: He be expelled immediately from the Institute and his program terminated. However, keeping in mind his future career and in the interest of consistency with the decision for the other two students involved in the act, he be given till next morning after the order is issued, to withdraw, if he so wishes, failing which the expulsion order should be issued. The Director is authorized to take necessary steps in this regard.

9. As regards Mr. Ishaan and Mr. Shashank there is no change, and their withdrawal from the Institute remains in effect.

6. That the Senate also made certain observations, however, the same are not being adverted to in the present appeal.

7. Challenging the decision dated 1st July, 2009 of the Senate of the Respondent communicated by the Director vide memorandum No. III- D/Aca/Misc./Case/001/2009/626 dated 10th July, 2009, the Appellant filed writ petition being WP(C) No. 10196/2009. This Court after hearing arguments dismissed the same by a detailed order dated 7th October, 2009. This order dated 7th October, 2009 in WP(C) No. 10196/2009 is the order impugned before us, along with prayers to attend and sit in third Semester classes and the classes held thereafter, and to allow the Appellant to re-appear in the theory and practical examinations held from 29th April, 2009 till 4th May, 2009.

8. The contentions of the learned Counsel for the Appellant before us are as under: Firstly, that charges 1 and 3 having been dropped against the Appellant and as the Appellant had no mala fide intention in view of the fact that he did not participate in copying and was only present at the time of incident, the Appellant cannot be said to be involved in the said case of leakage and copying as the only allegation proved against the Appellant is of being present. It is further contended that as there was no intention to copy or leak the examination paper on the part of the Appellant, charge two against the Appellant also does not survive. Secondly, the Appellant has not been afforded an opportunity to cross examine Ishaan and Shashank, thus the principles of natural justice having been violated, on this ground alone the order of expulsion is liable to be set aside. Thirdly, that the Senate is not the competent authority to remove the Appellant and hence the order of expulsion is illegal and void. Fourthly, the order of expulsion is too harsh and the same be converted to expulsion for one year.

Case of No Evidence

9. Dealing with the first contention it is contended by the learned Counsel for the Appellant that the only allegation against the Appellant in the charge sheet which survives is that he was present when the other two students, that is Ishaan and Shashank were misconducting and that since he had neither entered the room nor tampered with the electronic data or electronic records of the faculty

member, no allegation is proved against him even, as per the findings of the Senate. It is further stated that with the kind of marks the Appellant was scoring in the past, he could not be said to have the intention to commit this misconduct. The misconduct if at all was by Ishaan and Shashank, who had lower marks and that is why they had accepted the offer of withdrawal from the course. Learned Counsel for the Appellant to buttress his arguments further stated that he informed the guard, whose duty was to keep a watch and as he paid no heed to it, the Appellant went away. It is also contended that as no right of appeal is provided in the Statute, the Writ Court and thus the Appellate Court ought to appreciate the evidence and on the basis of evidence on record, no case is made out against the Appellant.

10. We are not in agreement with the contention of the learned Counsel for the Appellant that since he had been scoring good marks in the past he had no intention to do the tampering. As a matter of fact, in the two written statements the Appellant himself is admitting his presence at the spot. The conduct of the Appellant in neither stopping the other two students nor informing the authorities speaks volumes of his complicity in the misconduct. Further the Appellant also did not sign the entry register while entering the pool room and only one of three signed that too in a fake name. It is the admitted case of Appellant that he went to the pool room, however, he did not sign the entry register. It is well settled that when two or more persons act ad idem, each one is liable for the acts of the other, though they may be performing different roles. The Appellant acted as a guard when the two others were copying and thus was an equal participant in the misconduct and was by no chance an innocent bystander. The Appellant could not have played the pool alone when other two were copying. Moreover the Appellant had been earlier in 2009 found using dishonest means to help his friend Ishaan in the examination for which the two were warned by the Respondents. The Appellant to absolve himself has stated during the course of arguments that he informed the guard who did not pay heed to this. However, this contention of the Appellant is wholly incorrect as the same is neither mentioned in his statement dated 25th April, 2009 nor in the statement dated 28th April, 2009 which is an elaborate and well advised statement as is apparent from its language. The contention that the Appellant informed the guard, for the first time was taken up in WP(C) No. 8680/2009. This is clearly an afterthought and contrary to his statement dated 28th April, 2009 wherein he categorically stated that he never had the guts to inform the authorities. Not only this, the Appellant along with his other friends also thanked the guard for not recognizing them on the next day. In this regard, the statement of the security guard has also been recorded who denies that the Appellant ever told him about the incident. As a matter of fact the guard, Abhishek Pandey in his statement has stated that these boys thanked him for not recognizing. Statement of Abhishek Pandey is reproduced hereinafter:

I, Abhishek Pandey (Security Guard) S/o Shri Ramakant Pandey, am residing at E-27, Navada Housing Complex, Kakrola Mor, Uttam Nagar, New Delhi.

I was on duty in IIT at third floor on 23/04/09 from 9.45 PM to 6:10 AM, three students came at around at 10:30 PM, one of them signed in the entry register, three students came at around at 10:30 PM, one of them signed in the entry register and other two entered with him. When I asked him, he told that they are going to Lab and to play pool. During my duty I took three rounds and they were found playing pool. At around 12:20 AM they left.

On 24/04/09 at about 1 pm Mr. R.S.Yadav, Supervisor called me on phone and asked me to come. When I reached at about 2 pm then I was told that there was some tampering with a computer in a room at third floor in the night and I was taken to the hostel with the Director and Hostel were in their casual dresses and hence I could not recognize them. In the same evening when I was going back to my home, four students stopped me and thanked me for not recognising them, then I recognised three students who came to play pool in that night.

On 24/04/09 I obtained leave for 25/04/09 from the Director, as I was to go to station to see off my brother who is in Army and was going to Mau from Delhi on transfer. On 27/04/09 in the morning I told the Director that four students came to me and thanked me and I can recognise those students who came in the night of 23/04/09. At that time examination was going and I went with the Director and recognised three students.

I can recognise them today also. It seems that the fourth student was not present in the examination. Sir, I can recognise those four students any where and any time.

The contentions of the Appellant that charges 1 and 3 have been dropped or that he had no intention to misconduct are fallacious. The Senate has considered the totality of facts and circumstances before it. We find no infirmity in the decision of the Senate on the basis of material on record.

Principles of natural justice not complied with

11. The learned Counsel for the Appellant has vehemently contended that the principles of natural justice have not been complied with and he has not been afforded a fair hearing in the matter. According to the Appellant since in the first statements given by Ishaan and Shashank on 25th April, 2009 his name was not mentioned, he could not have been held guilty without being permitted to cross-examine Ishaan and Shashank. Reliance in this regard is placed by the learned Counsel for the Appellant on the decision rendered in the following cases: Khem Chand Vs. The Union of India (UOI)and Others, , Transmission Corporation of A.P. Ltd. and Others Vs. Sri Rama Krishna Rice Mill, , K. Sathyashankara Shetty Vs. Mangalore University, Mangalore and another, , Rajnish Kumar Rai Vs. The Gujarat University and Others and Ram Chander Roy Vs. University of Allahabad and Others, .

12. The learned Counsel for the Appellant has also challenged the impugned decisions on the ground that the Senate acted as the investigator, the prosecutor

and the judge and thus there was violation of the principles of natural justice. Reliance is placed in this regard on the decision of the Hon''ble Supreme Court in the case of Cantonment Executive Officer and Another Vs. Vijay D. Wani and Others, .

13. The learned Counsel for the Respondent, on the other hand, has contended that pursuant to the order of this Court dated 12th May, 2009 the Appellant was duly served with the show cause notice, explaining the charges against him, giving him time to file reply and a personal hearing by the Senate. It is contended that as the statements and the pleadings of the Appellant himself were inculpatory there was no need to provide the Appellant an opportunity to cross examine Ishaan and Shashank. Reliance is also placed on the decisions rendered in cases of Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, , State of Maharashtra and Others Vs. Prabhu, , The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, , Mansoor Alam v. Jamia Millia Islamia and Ors. CWP 3569/2000 and Ashish Bhateja v. Indian Institute of Technology and Ors. CWP 4042/1993.

14. The contention of the learned Counsel for the Appellant that the Senate has acted in its own cause is wholly fallacious. It is well settled that in enquiries in Academic Institution strict principles of Evidence Act do not apply and the decision is taken on the basis of preponderance of probabilities. In the present case it was not expected of the Senate to have got recorded the statements of the concerned persons through someone else by appointing investigators and after having recorded the statements only then they could have taken actions against the erring students. By taking the statements of erring students in writing, it cannot be said that the faculty which were also the members of the Senate, acted as an investigating agency and thus in terms of the provisions of the Code of Criminal Procedure it could not have adjudicated the issue and decided the fate of the Appellant.

15. We are in agreement with the contention of the learned Counsel for the Respondent that the principles of natural justice cannot be put in straight jacket formula and the application thereof depends on the facts of each case. Decisions in cases of indiscipline in academic institutions should be taken promptly to maintain the high standards of discipline. While conducting such enquiries a full fledged criminal investigation and trial with the procedure as prescribed in the Criminal Procedure Code and the Evidence Act has not to be followed. After enquiry on the basis of the material collected, the same has to be weighed on preponderance of probabilities. The Appellant has been afforded enough opportunity for proving his case. In the present case, on the basis of the statements of the Appellant himself there is evidence to come to the conclusion arrived at by the Respondents and it cannot be said to be a case of violation of the principles of natural justice. In the decision rendered by the Hon''ble Supreme Court in the case of Khem Chand v. Union of India (supra) in the back

drop of the facts of the case the Hon"ble Supreme Court held that an opportunity to deny the guilt and establish the innocence by affording an opportunity to cross examine the witnesses ought to have been afforded to the Appellant therein. In the case of K.Sathyasankara Shetty (supra) the High Court quashed the proceedings as no time was given to the Petitioner therein after giving the charge sheet so that he could prepare his defence. The Hon"ble Supreme Court in the case of Transmission Corporation of A.P. Ltd. (supra) held that no universal rule could be laid down as to whenever the statement of departmental officer is pressed into service for the purpose of adjudication, a right of cross examination would arise. The Hon"ble Court quoted: "In Advanced Law Lexicon by P. Ramanatha Aiyar (3rd Edition, Vol.4 page 3959 and 3968) the word "reasonable" has been described as follows:

(i) What is "fair" and proper under the circumstances.

(ii) The expression "reasonable" is not susceptible of a clear and precise definition. A thing which is reasonable in one case may not be reasonable in another. Reasonable does not mean the best, it means most suitable in a given set of circumstances.

(iii) There is no point on which a greater amount of decision is to be found in Courts of law and equity than as to what is reasonable: It is impossible a priori to state what is reasonable as such in all cases. You must have the particular facts of each case established before you can ascertain what is meant by reasonable under the circumstance - Lord Romilly. M.R. Labouchere v. Dawson (1872) LR 13 Eq. CA. 325.

In all the decisions relied upon by the learned Counsel for the Appellant it has been held that the compliance of principles of natural justice and fair play has to be looked into on the facts of each case.

16. In this regard reliance is placed upon the decision of the Hon"ble Supreme Court in the case of The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others, . The relevant paragraph 12 reads as follows:

12. In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the Universities or appellant No. 1 set up Enquiry Committees to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic Tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of the adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which educational institutions have to face from time to time is a serious problem and unless there is justification to do so, courts should be slow to interfere with the decisions of domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities under Article 226, the High Court is not

sitting in appeal over the decision in question; its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quash that order. But the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Enquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such enquiries, the Tribunal, must scrupulously follow rules of natural justice; but it would, we think, not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary courts of law. In the present case, no animus is suggested and no malafides have been pleaded. The enquiry has been fair and the respondent has had an opportunity of making his defence. That being so, we think the High Court was not justified in interfering with the order passed against the respondent.

17. Reliance is also placed on the decision in the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, of which reads as follows:

22. From this perspective, the question is whether omission to record reasons vitiates the impugned order or is in violation of the principles of natural justice. The omnipresence and omniscience (sic) of the principle of natural Justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a straight-jacket formula as an abstract proposition of law. It depends on the facts of the case, nature of the inquiry and the effect of the order/decision on the rights of the person and attendant circumstances. It is seen from the record and is not disputed, that all the students admitted the factum of fabrication and it was to his or her advantage and that the subject/subjects in which fabrication was committed belong to him or her. In view of these admissions the Enquiry Officer, obviously did not find it expedient to reiterate all the admissions made. If the facts are disputed, necessarily the authority or the Enquiry Officer, on consideration of the material on record, should record reasons in support of the conclusion reached. Since the facts are admitted, the need for their reiteration was obviated and so only conclusions have been stated in the reports. The omission to record reasons in the present case is neither illegal, nor is violative of the principles of natural justice. Whether the conclusions are proved or not is yet another question and would need detailed consideration.

37. It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy,

misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstances to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt "but" the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a straight Jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries.

38. From this legal setting we have to consider whether the inference deduced by the Education Standing Committee that the fabrication of moderators' mark-sheets was done at the behest of either the examinee or the parent or guardian is based on the evidence on record. It is already found that the examinees admitted the forgery of their concerned moderators' mark-sheets resulting the increase of marks to their advantage. The fabrication of the moderators' mark-sheets was done after the scrutiny by the concerned officials in the office of the State Board at Bombay and before the moderators' mark-sheets were taken out to Pune to feed the computer. Why one is expected or interested to wade through eighty thousand moderators' marks-sheets to locate only the 283 examinees' mark-sheets and add marks by fabrication? Unless either the examinee or parent or guardian approached the fabricator; gave the number and instructed him/ them to fabricate the marks, it would not be possible to know their number to fabricate. The act of fabrication is an offence. Merely that it was done in one subject or more than one makes little difference. Its gravity is not mitigated if it is committed in one subject alone. This is not an innocent act or a casual mistake during the course of performance of the official duty as is sought to be made out. It was obviously done as a concerted action. In view of the admitted facts and above circumstances the necessary conclusion that could unerringly be drawn would be that either the examinee or the parent or guardian obviously was a privy to the fabrication and that the forgery was committed at his or her or parent's or guardian's behest. It is, therefore, clear that the conclusion reached

by the Education Standing Committee that the fabrication was done at the instance of either the examinees or their parents or guardians is amply borne out from the record. The High Court in our view over stepped its supervisory jurisdiction and trenched into the arena of appreciation of evidence to arrive at its own conclusions on the specious plea of satisfying "conscience of the court".

Thus, in our view there is no violation of principles of natural justice and the Appellant has been afforded a fair and reasonable opportunity to defend himself.

Senate is not the competent authority to take a decision.

18. According to the learned Counsel for the Appellant it is the Director who is competent to take action against the Appellant if any and not the Senate and thus the decision of the Senate dated 1st July, 2009 is illegal and void ab initio. Learned Counsel for the Appellant refers to the Constitution of the Senate and its powers in reference to Indraprastha Institute of Information Technology-Delhi Act, 2007 (hereinafter referred to as the IIIT Act, 2007) and the Statutes framed under Sub-section 2 (c) of Section 18 read with Sections 22 and 23 of IIIT Delhi Act, 2007. It is further contended that as per the Act and the Statute, the Director also does not have power of expulsion and thus, there is no authority which can order expulsion of the Appellant from the Institute. Learned Counsel for the Appellant places reliance in this regard on the decision rendered by a learned Single Judge of Allahabad High Court in the case of Rana Pratap Singh Vs. Deputy Registrar (Academic) Banaras Hindu University, Varanasi and Others, .

19. On the other hand, it is contended by the learned Counsel for the Respondents that Senate is the academic body of the Institute and a larger body of which the Director as its CEO is the member. That the Appellant himself opted for a hearing by the Senate before the Division Bench of this Court in LPA 207/2009, pursuant to which the consent order dated 12th May, 2009 was passed wherein the Senate of the Respondent Institute was directed to give a show cause notice to the Appellant and pass a reasoned order in the matter after hearing him and considering his representations. It is contended by the learned Counsel for the Respondent that this plea of the Appellant is barred by the principle of constructive res judicata. Reliance in this regard is placed by the learned Counsel for the Respondent to the decision of the Hon'ble Supreme Court in the case of State of U.P. Vs. Nawab Hussain, .

20. It is further contended by learned Counsel for the Respondent that under Clause 14 of the Statutes, the Senate has power to consider the matters relating to general and academic interest either on its own initiative or on a reference of the Director and take appropriate action thereon.

21. Some of the relevant provisions of the IIIT Act, 2007 and the Statutes are as under:

Section 2 (a): "Senate" means the Senate of the Institute, an academic body.

(p) "Statutes", "Ordinances" and "Regulations" means respectively the Statutes,

Ordinances and Regulations of the Institute for the time being in force; and

Section 9: "Officers of the Institute. - The following shall be the officers of the institute:

- (1) The Director,
- (2) The Deans;
- (3) The Registrar; and (4) Such other officers as may be declared by the Statutes to be the officers of the Institute.

Section 10. "(3) The Director shall have all the powers necessary for the proper maintenance of discipline in the Institute and he may delegate any such power to such officer or officers as he may deem fit.

(4) The Director may, if he is of the opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the Institute by or under this Act and shall report to such authority the action taken by him on such matter:

Provided that if the authority concerned is of the opinion that such action ought not to have been taken, the Director shall take such action as is necessary and feasible to annul the action taken by the Director in excess of the powers conferred upon him.

Provided further that any person in the service of the Institute who is aggrieved by the action taken by the Director under this Sub-section, shall have the right to appeal against such action to the Board of Governors within ninety days from the date on which such action is communicated to him and thereupon the Board of Governors may confirm, modify or reverse the action taken by the Director.

(5) The Director shall exercise such other powers and perform such other functions as may be prescribed by the Statutes and the Ordinances.

Section 14: "Authorities of the Institute.- The following shall be the authorities of the Institute:

- (1) The General Council
- (2) The Board of Governors
- (3) The Senate.
- (4) Such other authorities as may be declared by the Statutes to be the authorities of the Institute.

Section 19. The Senate.- "(1) The Senate shall be the principal academic body of the Institute and shall, subject to the provisions of this Act, the Statutes and the Ordinance have the control and regulation of, and be responsible for

a. Interacting with the Board of Governors through the Director for formulation of

academic policies and programmes to realize the strategic plan of the Institute;

b. maintenance of standards of instruction, education and examination within the Institute; and,

c. exercise of such other powers and perform such other duties as may be conferred or imposed upon it by the Statutes;

(2) The constitution of the Senate and the terms of office of its members shall be as prescribed.

(3) The Senate shall have the right to advise the Board of Governors on all academic matters.

Section 22. Statutes.- Subject to the provision of this Act, the Statutes may provide for all or any of the following matters, namely:

(1) The constitution, powers and functions of the authorities and other bodies of the Institute, as may be found necessary to be constituted from time to time;

22. The relevant provisions of the Indraprastha Institute of Information Technology-Delhi Statutes 2008 (hereinafter called "the Statutes" are as under:

Section-7. Power and Functions of Director

(1) The Director shall be entitled to be present at, and address, any meeting of any other authority or any other body of the Institute but shall not be entitled to vote thereat unless he is a member of such authority or body.

(2) It shall be the duty of the Director to see that the provisions of the Act, the Statutes, the Ordinances and the Regulations are duly observed and he shall have all the powers necessary to ensure such observance.

(3) The Director shall have all the powers necessary for the proper maintenance of discipline in the Institute and he may delegate all such power to such officer or officers as he may deem fit.

The Senate 14 (1) Subject to the relevant provisions of the Act, the Statutes and the Ordinances, the Senate shall, in addition to all other powers vested in it by the Act or under the Statutes, have the following powers, namely:

(a) To consider matters of general academic interest either on its own initiative or on a reference from the Director or Deans of the Institute and shall take appropriate action thereon; and

(b) To frame such regulations as are consistent with the Statutes and the Ordinances regarding the academic functioning of the Institute, including discipline, admissions, fees and other academic requirements.

(c) The above regulations framed by the Senate will take effect after approval of the Board of Governors.

Section 21. Maintenance of discipline amongst the students of the Institute-

(1) The powers regarding discipline and disciplinary action in regard to the students of the Institute shall vest in the Director who may delegate all or any of his powers, to such authority as she/he may deem fit.

(2) Without prejudice to the generality of her/his powers relating to the maintenance of discipline and taking such action as she/he may deem appropriate for the maintenance of discipline, the Director may, in exercise of his powers, by order, direct that students be not admitted to a course or courses of study in the Institute or an institution for a stayed period, or be punished with a fine for an amount to be specified in the order, or that the result of the student or students concerned in the examination or examinations, in which he has or they have appeared, to be withheld.

23. We have perused the relevant provisions and we find that the Senate is the principal academic body of the Respondent Institute and is thus responsible for all its academic functions. Undoubtedly upholding the sanctity of the examinations, inculcating and ensuring discipline amongst the students is the foremost function of any academic body. That being the position it cannot be said that the Senate has no power to take action against the students in case of indiscipline. Clause 14(1)(a) of the Statute of the IIIT clearly empowers the Senate to consider all issues regarding the academic functioning either on its own initiatives or on reference by the Director and take appropriate action thereon. Even if the Director under Clause 7 (3) of the Statutes has all the powers necessary for the proper maintenance of the discipline in the Institute, it does not divest the Senate which is a larger body and the principal academic body to take action for indiscipline as per the Act on its own initiative or on a reference by the Director. We have also gone through the decision of the Allahabad High Court in *Rana Pratap Singh v. Deputy Registrar* (supra) relied upon by the learned Counsel for the Appellant and find that the same has no application to the facts of the case. In the said case the only body authorized to deal with the matter was the Academic Council which had not done so and the Court held that the body which had meted out the punishment had no jurisdiction.

24. We are also not in agreement with the contention of the learned Counsel for the Appellant wherein he has placed reliance on the decision rendered by their Lordships of the Hon'ble Supreme Court in the case of *A.R. Antulay Vs. R.S. Nayak and Another*, . In the said case the trial of the Appellant was transferred to the High Court vide order dated 16th February, 1984 and thus the said directions were set aside as the same took away the valuable right of statutory appeal of the accused. In the present case it is not the case of the Appellant that the appeal from an order passed by the Director of the Institute lies to the Senate and since the Senate has taken the action he has lost the right of appeal. As a matter of fact the contention of the learned Counsel for the Appellant is that there is no remedy of appeal provided in the Statute and hence this Court in its

writ jurisdiction should act as an appellate authority. Moreover, conscious of the fact that the Senate is the larger academic body the Appellant himself acceded to a decision being taken by the Senate before this Court in LPA 207/2009 on 12th May, 2009.

25. Learned Counsel for the Appellant also attacks the composition of the Senate saying that students are members of the Senate and thus he could not have been afforded a fair hearing. We find no merit in this contention. The Senate is a larger body and to safeguard the interest of students, it is neither unfair nor uncustomary to have students as its members. In the present case the Appellant is neither challenging the provisions of the Act or the Statute nor has sought quashing of the composition of the Senate. The composition of the Senate with amendment having been duly approved in the 8th meeting of the Board of Governors and confirmed in its 9th meeting along with the revised composition, we are not inclined to interfere in the same.

Expulsion is too harsh.

26. The last contention of the learned Counsel for the Appellant that the order of expulsion is too harsh and he should at best be expelled for one year also deserves to be rejected. It is not in the realm of the Writ Court or this Court to sit in appeal over the decisions in academic matters. Their Lordships of the Hon"ble Supreme Court have time and again held that in academic matters it is best to leave it to the academic authorities to take a decision, keeping in view the best interest of the Institute. Reliance in this regard is placed on the decision of the Hon"ble Supreme Court in the case of Director (Studies) and Others Vs. Vaibhav Singh Chauhan, . The relevant paragraph 32 reads as follows:

32. Before parting with this case, we would like to refer to the decisions of this Court which has repeatedly held that the High Court should not ordinarily interfere with the orders passed in educational matters by domestic tribunals set up by educational institutions vide The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others, , Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others, , Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, . We wish to reiterate the view taken in the above decisions, and further state that the High Courts should not ordinarily interfere with the functioning and order of the educational authorities unless there is clear violation of some statutory rule or legal principle. Also, there must be strict purity in the examinations of educational institutions and no sympathy or leniency should be shown to candidates who resort to unfair means in the examinations.

27. It may further be noted that the Senate on 1st July, 2009 while passing the orders of expulsion had given the option of withdrawal to the Appellant. However, he did not exercise it. Even during the course of hearing, this Court had asked the learned Counsel for the Appellant, whether he would like to have his client withdraw his name from the Institute rather than face expulsion in case the

appeal is dismissed. However, the learned Counsel for the Appellant stated that he had instructions to contest the matter on merits. The Appellant's father was also present in Court and he was also informed that in the event the appeal was dismissed, it may have far reaching consequences on the career of his son but the Appellant's father stated that he would like to have a decision on merits. We cannot also gloss over the fact that this is the second incident of indiscipline by the Appellant. In this appeal this Court cannot substitute its own decision by awarding lighter punishment of expulsion of one year to the Appellant.

28. We find no merit in the appeal. Hence the same is dismissed. No order as to costs.