
(1999) 06 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No's. 1218 and 1219 of 1999

Shaikh Shafaque Anjum M.H. and another

APPELLANT

Vs

University of Mumbai and others

RESPONDENT

Date of Decision : 15-06-1999

Acts Referred:

Evidence Act, 1872 — Section 3, 61, 9

Citation : (1999) 3 ALLMR 335 : (1999) 4 BomCR 468 : (1999) 3 MhLj 1

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Advocate : Y.S. Jahagirdar, H.A. Solkar and A. Bilawala., instructed by Bilawala and Co, for the Appellant; C.M. Jha, for the Respondent

Judgement

A.P. Shah, J.—Rule. Respondents waive service. By consent, petition is taken up for hearing.

2. The two petitioners, Shafaque Anjum and Mohammed Azam appeared for the 2nd M.B.B.S. final examination during October, 1998. Their centre was the University Department of Chemical Technology U.D.C.T. at Matunga. Shafaque Anjum was allotted Seat No. 209 while Mohammed Azam was allotted seat No. 208. From the sitting arrangement which is shown in Exhibit A to the petition, it is seen that there was another seat No. 200 which was between Shafaque Anjum's seat No. 209 and Mohammed Azam's seat No. 208. On 13th January, 1999 the University issued notices to the petitioners under the University Ordinance No. 220. It was alleged that the petitioners had "mutually copied answers to question Nos. 5 and 6" while answering the Pathology paper as the answers given by both the petitioners were identical. The petitioners submitted their replies to the allegation stating that similarity in the answers could be as a result of the preparation from the same text books as available in the market and the question of copying could not arise, would be evident from the sitting plan of the examinees. It was further stated that the petitioners are cousins and they have studied together and considering the fact that question Nos. 5 and 6 were

frequently asked in the college as well as the University examinations, they had prepared in advance jointly and as such the similarity in the two answer papers cannot be a ground for holding that they indulged in copying. The explanation of the petitioners was rejected by the University and by a letter dated 11th February, 1999 the petitioners were communicated the decision of the University that the petitioners were held guilty of using "unfair means" during the 2nd M.B.B.S. examination. The only basis for reaching this conclusion was the similarity in answers to question Nos. 5 and 6 of the Pathology paper. The petitioners' results in all the four papers in the said examination was declared as null and void and they were debarred from appearing in any University examination till the second half of 1999. The petitioners sought review of this order by filing separate applications. By letter dated 1st April, 1999 the petitioners were informed that the punishment of treating the 2nd M.B.B.S. examination as null and void was confirmed but the bar of appearing in any University examination was reduced by one term only.

3. I have heard Mr. Jahagirdar for the petitioners and Mr. Jha for the University. I have also gone through the answer papers of both petitioners in the Pathology papers. At the outset, I may observe that as far as question No. 6 is concerned, the answers given by the petitioners are not identical. A mere perusal of the said answers show that although the answers are similar, they are not identical. Question No. 6 consisted of short-notes and both the petitioners have answered the short-notes in different sequence. Therefore, the charge of copying is totally unfounded as far as question No. 6 is concerned. Undoubtedly, the answers to question No. 5 can be said to be almost identical. However, I may hasten to add that as far as question No. 5 is concerned, Shafaque Anjum has ended her answer with a graph of the "serological events in H.B.V. infection" and which graph was not made by Mohammed Azam. Now the question is whether this similarity in answers to question No. 5 can be the sole basis for holding the petitioners guilty of the charge of copying. The petitioners are closely related. I find truth in their case that they had studied together. It is also brought on record that question No. 5 was asked frequently in the examinations conducted by the University. It has been pointed out that on as many as nine occasions this question was asked in the 2nd M.B.B.S. examination. Since question No. 5 was repeatedly asked, there is no wonder that the answers are in stereotype manner. A mere similarity of the pattern of the answers in the examination could not lead to the sure conclusion that the petitioners had resorted to copying. As indicated earlier, there was one student between the two petitioners who was allotted seat No. 200. No case of copying or any malpractice was ever reported by the supervisory staff attending the examination. Since there is absolutely no evidence of the alleged copying, the charge levelled against the petitioners and consequently the order of the University declaring the results of the petitioners as null and void and debarring them from appearing in the University examination for one term cannot be sustained.

4. In *Rajesh Kumar and Another Vs. Institute of Engineers (India)*, , in a

somewhat similar case of the alleged copying, the two appellants before the Supreme Court along with eleven others were charged for mass copying solely on the ground of similarity appearing in their answer papers. When the students defended their case by pointing out the sitting plan, etc., the Institute opted for a new technique to test the ability of the appellants therein. They were asked to read certain passages for some time and to reproduce the same but since the candidates failed to comply with the request, their results were declared as null and void. The Supreme Court, while allowing the appeal observed:

"7. The resume of the a force detailed facts gives a clear insight into the minds of the members of the Institute who sat in judgment on the fate of the appellants. The doubts as expressed by the learned Single Judge of the High Court in the regular second appeal pertaining to the material available and the sitting pattern and also that the appellants had never sat in the subsequent examinations after the period of disqualification was over, were conveniently disregarded by the Institute. It would, in these circumstances, be not wrong to assume that had the members of the Institute gone into grips with that material, the result would have gone in favour of the appellants. Conveniently, other factors were brought in replacement to conquer the field inasmuch as the appellants were put to a cramming test, there and then in order to judge their capability of memory retention in a matter of minutes. All literate men have been students at a given point of time but all have not been crammers. Those who cram do not achieve their goal by a single reading. It is a ceaseless effort for days and day till the desired result is achieved. Crammers inter se do not have any nexus with each other. The text of a book as the common source for cramming establishes no connection. That per se cannot be evidence of any conspiracy between the crammers to adopt unfair means in the examination unless there be material to show that there was copying of the answer-books, descending from the answer-book of one of the candidates, or directly from the book leading to the copying by others. The overall consideration of the Institute reflected that its members thought that they would be put to an embarrassment if the plea of the two appellants were to be accepted and therefore, thought of declining relief to the appellants. Such result cannot be permitted to follow from the deliberation of the Institute. In the interest of fair play this Court would thus step in to give a corrective dose."

5. In *Harish Chandra v. Board of H.S. & Intermediate Education* AIR 1981 All 44 , the Division Bench did not accept the charge of copying solely on the ground that the answers of the two translation given by the examinees remarkably tallied with one another. In yet another case of a similar nature in *Rakesh Kumar Thakur Vs. The Union Public Service Commission and Another*, , it was held that the opinion formed by the Commission based on circumstantial evidence of the report of the examiner who observed the similarity in some of the answers in the two answer books in question was not proper, there being no direct evidence that any one observed the petitioner using unfair means during the course of the examination.

6. In view of the foregoing discussion, both the petitions succeed. Rule is made absolute in each of the petitions in terms of prayer Clauses (a) and (b). No order as to costs.

7. Petition succeeds.