
(2012) 01 DEL CK 0046

In the Delhi High Court

Case No : Writ Petition (C) 2587 of 2011 and CMs 5507 of 2011, 20068 of 2011

Syed Arshad Hussain

APPELLANT

Vs

Jamia Millia Islamia and Another

RESPONDENT

Date of Decision : 03-01-2012

Acts Referred:

Citation : (2012) 2 ILR Delhi 308 : (2013) 1 SCT 192

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : R.K. Saini with Mr. Vikas Saini and Mr. Sheikh Imran Alam, for the Appellant; Jaya Goyal, Advocate with Mr. Rohit Gandhi, for the Respondent

Judgement

Hima Kohli, J.—The present writ petition is filed by the petitioner impugning the order dated 03.03.2011 passed by respondent No.2/Controller of Examinations, Jamia Millia Islamia University, whereby the Examination Committee constituted by respondent No.1/University decided to penalize the petitioner for indulging in use of unfair means while writing the Examination -MBA (Evening), Part-II, Paper - MBA-201 held on 18.01.2011, by cancelling all the papers of the semester/year in which the petitioner had appeared and thus declining to promote him to the next academic year.

2. The facts of the case lie in a narrow compass. It is the case of the petitioner that he had completed B.Tech. (Electrical) from respondent No.1/University and being in employment, he took admission in MBA (Evening) three year course in the year 2009. Between January-February 2011, the petitioner was to appear for the second year MBA (Evening) examination. On 18.01.2011, the petitioner appeared for the paper - MBA-201 (Part-II) examination in respect of the subject, Financial Management, which was the first paper of the said semester/year. As per the petitioner, during the course of the examination, the flying squad paid a surprise visit to room No.320, where the petitioner was answering his examination and on discovering some documents in his pocket, the same were confiscated. The stand of the petitioner is that the documents in question

pertained to the office where he was employed, i.e., M/s ETA Engineering Pvt. Ltd. and that the said documents were in no manner related to the examination in which he was appearing on the relevant date. It is averred in the petition that the checking staff and the invigilator on duty examined the contents of the documents found in possession of the petitioner and thereafter left the issue with the invigilator on duty. However, the invigilator on duty took away the answer sheet of the petitioner, subject to the decision of the competent authority.

3. Although the aforesaid examination in question, in which the petitioner had appeared, took place on 18.01.2011, respondent No.1/University did not initiate any action on the same date. Instead, necessary proceedings were initiated against the petitioner on the next day i.e., on 19.01.2011, when a notice was issued to the petitioner charging him of indulging in use of unfair means by bringing written material in the examination hall and calling upon him to appear before the Examination Committee on 18.02.2011 to show cause as to why further action be not taken against him in accordance with the Ordinance of respondent No.1/University. Upon receiving the aforesaid notice dated 19.01.2011, the petitioner appeared before the Examination Committee on 18.02.2011 and furnished his explanation to the effect that the documents found in his possession were work related official documents left inadvertently in his pocket and they were not relevant for taking the examination in question. Thereafter, the petitioner received the impugned order dated 03.03.2011 passed by respondent No.2/Controller of Examinations stating inter alia that his case had been considered in the light of the material on record, the statement as tendered by the petitioner before the Examination Committee, and after due deliberations, it was deemed appropriate to cancel all the papers of the semester/year in which the petitioner had appeared and to refuse him promotion to the next academic year. Aggrieved by the aforesaid order dated 03.03.2011, the petitioner has preferred the present petition.

4. Vide order dated 04.05.2011, while taking notice of the stand of the petitioner that he had inadvertently carried in his pocket some official documents belonging to his office, which were discovered during checking by the concerned Invigilator while the petitioner was appearing in the examination in question and further, in view of the submission made by the counsel for the petitioner that the petitioner had in his possession, photocopies of the documents, which he had been allegedly carrying with him on 18.01.2011, while issuing notice to the respondents and calling upon them to file counter affidavits, the Court deemed it expedient to direct the DCP (Vigilance), Delhi Police to probe the matter and to find out as to how the incriminating material allegedly confiscated by the Flying Squad from the petitioner was no longer available with the office of respondent No.1/University and instead was being produced by the petitioner in Court.

5. The aforesaid order was passed in the light of the submission made by the counsel for respondent No.1/University that the incriminating material had gone missing from the custody of the concerned officer, i.e., the Deputy Controller of

Examinations. The DCP(Vigilance), Delhi Police was also directed to ascertain as to whether on the relevant date the alleged incriminating material was at all taken into possession by the Invigilator or not. Further, as an interim measure, the petitioner was permitted to attend his final year classes while making it clear that the said interim protection granted to him would not create any special equity in his favour and the same would be subject to the final outcome of the present petition. It is stated that on the basis of the aforesaid interim order dated 04.05.2011, the petitioner has been attending his final year classes and the examinations are slated to begin in the month of January 2012.

6. Pursuant to the aforesaid order, the Addl.CP/Vigilance, Delhi Police submitted two status reports. The first one is dated 19.07.2011, wherein a request was made to the Court to direct respondent No.1/University to render necessary co-operation and appoint a Nodal Officer to provide all assistance during the enquiry. The second and final status report submitted by the Addl.CP/Vigilance is dated 25.08.2011, which is reproduced hereinbelow for ready reference:

In continuation of the previous status report dated 19.07.11, it is further submitted that the respondent Jamia Milia Islamia University had also conducted an internal enquiry in to the matter, a copy of which was filed by them in the Hon"ble Court on 19.07.11. A copy of the same was provided to this office on 08.08.11.

However, as directed the matter was still enquired in to by this office. During enquiry, it revealed that on 18.01.2011, Prof. M.N. Doja was the invigilator and Asst. Prof. Mohamad Amjad was co-invigilator in room number 320, where the petitioner Syed Arshad Hussain was taking his MBA, Part-II, Paper No.201 examination. Dr. Syed Akhtar Imam was on duty as Assistant Superintendent.

During the examination, Dr. Arshad Noor Siddiqui member of the flying squad visited room No.320 and confiscated an incriminating document from the petitioner's pocket. He handed over the confiscated document along with the answer booklet to the invigilator, Prof. M.N. Doja, who further reportedly handed it over to Dr. Sayed Akhtar Imam, Assistant Superintendent. But Prof. Doja could not produce any witnesses to corroborate his version that the document was handed over to Dr. Sayed Akhtar Imam. However, Dr. Sayed Akhtar Imam denied receiving any incriminating document along with the answer booklet from Prof. M.N. Doja, and hence he could not initiate the requisite proceeding against the petitioner on the date of examination i.e. 18.01.11.

In view of the above contradictions, it is clear, that the incriminating document allegedly confiscated by the flying squad member Dr. Arshad Noor Siddiqui from the petitioner was not seized property due to the lapse on the part of invigilator Prof. M.N. Doja and Dr. Sayed Akhtar Imam

(Assistant Superintendent).

7. Counsel for the petitioner contends that in the light of the aforesaid status

report, wherein the Addl.CP/Vigilance submitted that the incriminating document allegedly confiscated by the flying squad members from the petitioner was not a seized property on account of a lapse on the part of the concerned Invigilator and the Superintendent of Examinations, there exists no basis for passing of the impugned order dated 03.03.2011 by respondent No.1/University inasmuch as there was no material available with the University, for it to have arrived at a conclusion that the petitioner was found indulging in using unfair means under the Ordinance 15(XV) Para 30, 31 "Instructions to Candidates for Examinations" and use of "Unfair means/Misbehavior" printed on the Admit Card issued to the examinees, due to which all his papers for the relevant semester/year were cancelled.

8. Learned counsel for respondent No.1/University submits that a copy of the enquiry report dated 07.07.2011 submitted by the Enquiry Officer appointed by the Vice Chancellor of respondent No.1/University has been enclosed, alongwith the counter affidavit filed by respondent no.1/University on 18.07.2011. A perusal of the aforesaid preliminary enquiry report dated 07.07.2011 prepared by the Enquiry Officer, Prof. Nisar-Ul-Haq, Head, Department of Political Science, respondent no.1/University makes an interesting reading. The Enquiry Officer has set out the sequence of events, which occurred on 18.01.2011 and taken notice of the discrepancies between the versions of the parties directly involved in the case, namely, the Invigilator, Prof. M.N. Doja and the Assistant Superintendent, Dr. Akhtar Imam. After conducting detailed discussions with all the parties involved in the case, i.e., the staff members of the flying squad, the Invigilators, the Superintendent and the Assistant Superintendent, the Enquiry Officer had the following observations to make:

1. The Invigilator (Prof. M.N. Doja) and Assistant Superintendent (Dr. Akhtar Imam) are found to be the main persons involved. The statements of the two are contradictory and hence it is difficult to discern which one is responsible for not registering the case of unfair means against Syed Arshad Hussain on 18th January 2011, the day of the examination.

2. It was very clear to the Enquiry Officer, that the Superintendent of Examinations-Prof. Khalid Moin was completely unaware of the incident till the next day, when the Proctor, brought it to his notice. Also, the mandatory requirement of the presence of five Assistant Superintendents and the Superintendent of Examinations during the examination was clearly not adhered to. There was just one Assistant Superintendent (that too the junior most one) present on 18th January 2011 in the MBA (E) examination hall.

3. There was considerable delay in booking the case. Further the case was booked (the next day) without any proof.

4. The responsibility of safeguarding the incriminating document rests with the Invigilator, Prof. M.N. Doja and/or Dr. Akhtar Imam, both of whom are giving contradictory explanations of the incident. They have evidently lapsed in

discharging the duties assigned to them, and one or both of them are not giving an absolutely truthful account.

5. It seems that the relevant paper was taken away by the student Syed Arshad Hussain at some point from the custody of either the invigilator - Prof. M.N. Doja or the Assistant Superintendent - Dr. Akhtar Imam. Either or both of the latter come under the purview of suspicion.

6. The procedure for booking the case of unfair means was not followed right at the outset. First at the level of invigilator, second at the level of the Assistant Superintendent and finally while booking the case of unfair means on the next day and that too without any written document as proof.

7. The flying squad team needs to be commended for discharging their duty and ensuring the initiation of follow up action.

8. The student has taken the advantage of the support from the obvious lack of unanimity and inefficiency amongst those responsible for conducting the examinations.

9. After taking notice of all the aforesaid discrepancies and observing that the petitioner had taken advantage of the lack of due diligence shown by the invigilator and the superintending staff of respondent No.1/University in following necessary procedures in case of such a nature, the following suggestions were made by the Enquiry Officer:

Suggestions for future:

A. Clear outlined responsibilities (including time of presence at the Examination Centre's) of the all the Personnel involved in the Examination Process - Superintendent of Examinations and all the Assistant Superintendents, Invigilators, Security guards etc.

B. Clear outlined guidelines for booking students under unfair means including presence of any incriminating documents on the person of the candidates/ Examinees. This will avoid any discrepancy on the questionability of unfair means.

C. Log Book/Record maintained of all the "out of the ordinary" happenings in the Examination Hall.

10. It is candidly admitted by the counsel for respondent No.1/University that it is on account of the errors/omissions committed by the Invigilator and the Superintendent of the Examinations on the relevant date that the incriminating documents were not seized from the petitioner and they remained in his possession. It is further submitted by her that those responsible for the aforesaid errors/omissions are being brought to book by initiating appropriate departmental enquiry against them.

11. In view of the above mentioned facts and circumstances that have emerged in the present case, the Court has no option but to hold that the benefit of doubt

has been given to the petitioner by accepting the status report dated 25.08.2011 submitted by the Addl.CP/Vigilance, Delhi Police to the effect that incriminating document allegedly confiscated by the members of the flying squad from the petitioner was not a seized property due to a lapse on the part of the Invigilator and the Assistant Superintendent and that proper procedure was not followed by respondent No.1/University as required by it before passing the impugned order dated 03.03.2011, cancelling all the papers of the semester/year in which the petitioner appeared and refusing to grant promotion to him.

12. It is pertinent to note that vide order dated 21.12.2011, respondent No.1/University was directed to produce in a sealed cover, the result of Part-II of MBA (Evening) course undertaken by the petitioner. The said result was however not produced on the date fixed, i.e., 23.12.2011. Today, counsel for respondent No.1/University hands over the result of the petitioner, which reveals that except for the paper -MB201 relating to the subject, Financial Management, which is subject matter of the present petition, the petitioner has cleared the remaining six papers in respect of the other subjects.

13. While allowing the present petition and setting aside and quashing the impugned order dated 03.03.2011, respondent No.1/University is directed to declare the results of the petitioner for the Part-II of MBA (Evening) course and permit him to take his final year examinations as also the supplementary examination for MB-201 paper relating to the subject, Financial Management in this session itself.

14. Before parting with the present case, the Court expresses its deep dismay and discontentment at the manner in which the officials of respondent No.1/University have handled the incident of 18.1.2011 and this has also displayed the lack of the application of mind on the part of the Examination Committee in scrutinizing the documents related to the petitioner. Had such measures been taken at that stage when the documents were placed before the Committee, it would have found that the very case of respondent No.1/University, that unauthorized material was found in the possession of the petitioner while writing the examination, had remained unsubstantiated due to non-availability of such documents in the custody of the concerned officials of the respondent/University. Instead, the Committee proceeded to act in a casual and mechanical manner and imposed a penalty on the petitioner.

15. It is unfortunate that the malady of examinees resorting to unfair means/indiscipline while attempting papers seems to be spreading like wild fire. Every other day, there are reported cases of blatant cheating by examinees themselves or with the assistance of accomplices, thus polluting the entire education system. All out efforts must be made by educational institutions and Universities to nip such illegal activities in the bud and bring the guilty to book. But to attain the said object, the authorities must be extremely vigilant and quick to act and then meticulously follow the procedures prescribed for booking those who are caught in the act. If due promptitude and efficiency is exercised by them, it shall go a

long way in stemming the tide of rampant cheating and use of unfair means by examinees and send a clear message to all the stakeholders that such activities shall not be tolerated and the guilty would not be spared. Also, a greater degree of care for creation of stringent rules and adherence thereto is expected out of respondent No.1/University to discourage any act amounting to cheating/use of unfair means by the examinees, more so, when electronic devices like mobile phones etc. are being used to perpetrate such illegality. To achieve this goal, it is deemed expedient to direct respondent No.1/University to ensure that all the officers involved in the examination process, are made well conversant with such like electronic devices and familiarized with all the necessary steps required to be followed by them when confronted with such situations, which require immediate intervention and prevention.

16. The present case is a clear case of lack of due diligence exercised on the part of the concerned officers of respondent No.1/University present at the spot, which fact has clearly been brought out in the status report filed by the Addl.CP/Vigilance, Delhi Police as also in the Enquiry Report submitted by the Enquiry Officer appointed by the Vice Chancellor of respondent No.1/University, wherein a number of discrepancies in the version of the events that occurred on 18.1.2011 were pointed out and some suggestions have been made to ensure that in future, all the personnel involved in the examination process discharge their duties responsibly and that well defined guidelines are set out for booking students caught using unfair means in examinations.

17. The respondent No.1/University is therefore directed to take immediate steps to implement the suggestions made by the Enquiry Officer in his report dated 07.07.2011 and streamline and define the steps to be followed by the personnel of the University involved in the Examination process. The Vice Chancellor of respondent No.1/University shall ensure that requisite updated guidelines/manuals are prepared and circulated to all the personnel who shall be involved in the examination process, within a period of two months from today. Further, in view of the submission made by the counsel for respondent No.1/University that necessary steps shall be taken by the University to book the erring personnel involved in the present case, respondent No.1/University is directed to initiate appropriate departmental enquiry in that regard and conclude the same as per law, as expeditiously as possible.

18. The petition is disposed of alongwith the pending applications. A copy of this order be forwarded by the Registry forthwith to the Vice Chancellor of respondent No.1/University for perusal and compliance.