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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13th December, 2022

IN THE MATTER OF:

+ **LPA 713/2022**

YOGESH PARIHAR

..... Appellant

Through: Mr. Sriram P, Mr. Vishnu Shankar M
S, Ms. Athira G Nair, Advocates

versus

DELHI TECHNOLOGICAL UNIVERSITY & ORS.... Respondents

Through: Ms. Avnish Ahlawat, Standing
Counsel for DTU with Mr. Nitesh
Kumar Singh, Ms. Palak Rohmetra,
Ms.Laavanya Kaushik, Ms. Aliza
Alam, Advocates for R-1 to R-3
Mr. Anuj Aggarwal, ASC for
GNCTD with Ms. Ayushi Bansal,
Mr.Sanyam Suri, Ms. Arshya Singh,
Advocates for R-4

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

CM APPL. 53802/2022 (Exemption)

Allowed, subject to all just exceptions.

LPA 713/2022

1. Aggrieved by the Order dated 22.11.2022 passed by the learned Single Judge in W.P.(C) 15449/2022, the Appellant has filed the instant appeal.

2. The Appellant herein is an engineering student and is in the third semester of Bachelor of Technology, Computer Science at Respondent No.1/Delhi Technological University.

3. It is stated that the Appellant was found using unfair means in the end-term second semester examination in two subjects, namely, (i) Programming Fundamentals (ii) Basic Electrical Engineering. It is stated that Respondent No.1 has imposed Category IV punishment on the Appellant. The Respondent has cancelled all the second semester examinations taken by the Appellant and the registration of the Appellant for the third semester has automatically been cancelled. The Appellant has been directed to register himself for second semester along with B. Tech students admitted in the year 2022.

4. Aggrieved by the said decision, the Appellant filed W.P.(C) 15449/2022, praying for the following reliefs:-

“i) Issue directions/orders/writ in the nature of mandamus thereby setting aside or quashing the order dated 6/10/2022 passed by the competent authority that is Respondent no. 2 having approved the recommendation of the Unfair Means Scrutiny Committee cancelling all examinations of Second Semester of the petitioner and further cancelling his registration of Third Semester.

ii) Further quash the punishment awarded to the petitioner to register himself for Second Semester along with B.Tech students admitted in year 2022.

iii) Any other reliefs/directions which this Hon'ble Court may deem fit and proper in the facts and circumstances of this case to which the petitioner may be found deserving, may kindly be granted in favour of the petitioner and against the respondents.”

5. It is the contention of the Appellant that he is a bright student who has won laurels at national levels and has been awarded scholarships in the National Talent Search Examination, 2019. A certificate of merit was awarded to him by the National Council of Educational Research and Training, New Delhi.

6. It is stated that the end-term theory examination of second semester was scheduled to be held with effect from 01.08.2022 onwards. It is stated that on 04.08.2022, while the examination for “Programming Fundamental” was being conducted, the invigilator on duty found a mobile phone with one of the students named Himanshu during the examination, which was used for the purpose of cheating.

7. It is stated that the mobile phone and the answer sheet was seized by the invigilator and the superintendant was apprised of the matter. It is stated that when the mobile phone was checked, a Whatsapp group of 22 students, which was named as “Ans.”, was found. The said group had some portion of the question paper of “Basic Electrical Engineering” held on 03.08.2022 and some of the answers of “Programming Fundamentals” examination held on 04.08.2022. The question and answers had been shared in the group. It is stated that during inquiry, it was found that these pictures were shared from the mobile phone belonging to the Appellant.

8. It is the contention of the Appellant that his mobile phone was taken by his roommate, one Vatan Tomar and his phone had been misused by Vatan Tomar. It is stated that Vatan Tomar had used his mobile phone for sharing questions and answers of the said two examinations. It is stated that action was taken against all the 22 students who were part of the Whatsapp group. It is stated that on the basis of report of the superintendant,

Respondent No.2/Controller of Examination, Delhi Technological University formed an Unfair Means Scrutiny Committee headed by him and a notice dated 21.09.2022 was issued to the students including the Appellant. The Appellant was directed to appear for a personal hearing before the Unfair Means Scrutiny Committee on 23.09.2022.

9. It is stated that on 06.10.2022 “Category IV” punishment was imposed on the Appellant by the competent authority on the recommendations of the Unfair Means Scrutiny Committee. The effect of the punishment was that all the examinations of the second semester taken by the Appellant were cancelled and his consequent admission to the third semester was also cancelled and the Appellant was directed to register for the second semester along with the B. Tech students admitted in the year 2022.

10. The Appellant has challenged the order of the competent authority by filing W.P.(C) 15449/2022. As stated, it is the contention of the Appellant that his mobile phone had been taken by one of the students named Vatan Tomar and has been misused by him. It is also stated by the Appellant that the Whatsapp group “Ans.” was created on 20.06.2022 and the Appellant was added in the said Whatsapp group on 02.08.2022 by Vatan Tomar. It is stated that only one day before the examination in question and for the next two days during the examinations, one Vatan Tomar was using the Appellant’s mobile phone. It is stated that answers to some questions were shared in the group, when the Appellant was still in the examination hall. It is stated that the Appellant is a bright student and he is a victim of the misuse of the mobile phone by Vatan Tomar.

11. A counter affidavit was filed by Respondent No.1/University. The counter affidavit shows that the Appellant had shared the question paper in the Whatsapp group during the examination and shared hand written and print out of the answers during the examination. It has also been found that the chats of some of the students were addressed to the Appellant for questions and answers.

12. The learned Single Judge after going through the material on record held that the University has undertaken a thorough probe and has examined all the material placed before it and has come to the conclusion that the Appellant was guilty of using unfair means. The learned Single Judge was of the opinion that the University is the best judge and the decision taken by the University does not warrant any interference. It is this Order which has been challenged in the instant appeal.

13. Learned Counsel for the Appellant contends that at the time when the Appellant is alleged to have used the mobile phone, he was taking the examination, and, therefore, the entire basis of the allegation against the Appellant cannot be accepted. He further submits that in any event, the punishment under “Category IV”, which provides for cancelling all the examinations of the Appellant for the second semester and thereby cancelling his registration for the third semester is grossly disproportionate to the allegations against the Appellant. Learned Counsel for the Appellant further contends that the Appellant is a bright student and his entire career will be spoiled if the entire second semester examination is cancelled.

14. *Per contra*, learned Counsel for the University has supported the order impugned herein.

15. Heard learned Counsel for the parties and perused the material on record.

16. A perusal of the material on record shows that during the end-term examination on 04.08.2022, mobile phone was found in possession of one Himanshu. The said mobile phone contained Whatsapp group called “Ans.”, in which the answers to the questions and the question papers were being shared amongst 22 students. The Appellant is a Member of the said group. The Unfair Means Scrutiny Committee has found that the Appellant was in knowledge of the fact that he is a part of the Whatsapp group before 03.08.2022 and 04.08.2022, in which the answers and the questions were shared. The Committee was of the opinion that the alibi of the Appellant that his mobile phone was being used by Vatan Tomar on 2nd August, 2022 and 3rd August, 2022 does not hold any force because the Appellant has not been able to furnish any material or witness that his mobile phone was not in his possession for the two consecutive days and that he was unaware that his phone was being misused. It has also been concluded that even if it is presumed that the phone of the Appellant was not with him, Vatan Tomar shares the same hostel room with the Appellant herein and it was in the knowledge of the Appellant herein that his phone was being used by the said Vatan Tomar and even after knowing that his phone was being misused, the Appellant has not informed any authority.

17. The decision taken by the Vice Chancellor on 15/11/2022 is based on facts and cogent reasoning. The reason for imposing punishment under “Category IV” given by the Vice Chancellor is that the Appellant had facilitated the act of sharing and using unfair means not only limited to him alone but to other students as well which amounts to serious misconduct.

The said reasoning does not require any interference. Persons using unfair means to steal march over students who work hard to prove their worth has to be dealt with a heavy hand. Students, who resort to unfair means and get away with it, cannot build this nation. They cannot be dealt with leniently and they should be made to learn a lesson not to adopt unfair means in their life. The facts in the case demonstrate that the students have been able to get hold of the question paper and they have shared the questions and answers amongst themselves, giving them unfair advantage against students who would have burnt their midnight oil to prepare for the exams.

18. The Apex Court in Dr. Ambedkar Institute of Hotel Management, Nutrition and Catering Technology vs. Vaibhav Singh Chauhan, (2009) 1 SCC 59 has stressed on the need to maintain purity and strict discipline in the conduct of examinations, deeming it to be necessary for the overall progress of the nation. Copying and cheating in examinations is like Plague. It is a pandemic which can ruin society and the educational system of any country. If the same is left unchecked or if leniency is shown, the same can have a deleterious effect. For any country's progress, the integrity of the educational system has to be infallible. Whether it is paper setters maintaining utmost confidentiality, students not cheating, invigilators being vigilant, examiners doing their job with utmost alacrity knowing that the future of students is in their hands, Universities and colleges not tampering with results - the conduct of all stakeholders has to reflect commitment and also be unblemished [Refer to: Aarzo Aggarwal vs. University of Delhi, W.P.(C) 2980/2020 – 26th May, 2020].

19. This Court finds that the University has been lenient in imposing "Category IV" punishment rather than rustivating the cheaters. Be that as it

may, the Vice Chancellor and the learned Single Judge have taken into account all the facts. The argument of the learned Counsel for the Appellant that the Appellant's phone was being used when he was in the examination centre does not impress this court and does not warrant interference. This Court, while exercising its jurisdiction under Article 226 of the Constitution of India, and after looking into the decision making process, the facts that have been taken into account and as to whether the reasoning given by the authorities below is so arbitrary that no man of prudence would reach such a conclusion, is of the opinion that the decision of the College Authorities and the Order of the learned Single Judge do not require any interference from this Court.

20. Accordingly, the appeal is dismissed, along with the pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

DECEMBER 13, 2022

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