

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 3752 of 2023**

KARTHIK DEEPAK SHARMA

Versus

DIRECTOR GENERAL, NIRMA UNIVERSITY

Appearance:

AADITYA D BHATT(8580) for the Petitioner(s) No. 1

CHANDNI S JOSHI(9490) for the Petitioner(s) No. 1

MR DHAVAL DAVE, LD. SENIOR COUNSEL WITH UDIT N VYAS(9255) for
the Respondent(s) No. 1,2,3**CORAM:HONOURABLE MS. JUSTICE SANGEETA K. VISHEN****Date : 28/03/2023****ORAL ORDER**

1. Mr Aaditya D. Bhatt, learned advocate appearing for the petitioner, while inviting attention of this Court to the order dated 8.6.2022, submitted that the petitioner, has been penalized and the result of all the examinations (CE/LPW/PW/SEE/TEE) of all the courses of Semester VII of B.Com. LL.B.(Hons.) December 2022, has been cancelled. It is submitted that the reason behind, was that the petitioner, was found with 19 printed material at the time of examination of Law of Taxation.

2. It is further submitted that the Student Information Booklet 2022, governs the aspect of nature of unfair practices in the examination. It is submitted that various punitive measures, have been provided for the nature of unfair practices in the examination. Regulation 5 of the tabular form, provides that if the student is found for second time, indulging in unfair practices in any examination (CE/LPW/TEE) under the Regulation nos.2, 3, 4 and penalized previously under said guidelines, the punitive measure

provided is cancellation of result of all the examination of all the courses of concerned Semester/Trimister. Invoking sub-clause (iv) of Regulation 5 of the Guidelines that the order has been passed imposing the penalty of canceling the result of all the examination of all the courses of Semester VII. It is submitted that such invocation, is misconceived inasmuch as, for invoking Regulation 5(iv) of the Guidelines the result of the student, ought to have been cancelled for all the examinations (CE/LPW/PW/TEE) of the concerned course. Whereas, in the case of the petitioner, for previous misconduct the penalty imposed was cancelling of result of semester end examination of Family Law II of Semester VI.

3. It is submitted that the incident relate back to Semester VI wherein, the petitioner, in the examination, went with the mobile phone and when, the petitioner realized that he has a mobile phone in the pocket, he voluntarily submitted it to the invigilator. The petitioner, was required to fill up the unfair means form even though the petitioner had not practice any unfair means which, led to the passing of the order by the Examination Reforms Committee whereby, the Committee, recommended to impose the penalty of cancellation of result of the Semester end Examination of Family Law II of Semester VI.

4. It is further submitted that if at all Regulation 5(iv) is to be invoked, the student should be previously penalized under Regulation nos.2, 3 and 4 of the tabulated form; however, considering the nature of penalty imposed, it cannot be said that the petitioner, was penalized under Regulation 3 and therefore, the present, being the first case of misconduct, the Regulation 5(iv) ought not to have been invoked. Reliance is placed on the judgment in the case of *State of Gujarat v. Sandip Omprakash Gupta* reported

in 2020 LiveLaw (SC) 1031. Though the judgment, is relatable to the Criminal Jurisprudence but, it has been held and observed that it is a sound rule of construction that a substantive law should be construed strictly so as to give effect and protection to the substantive rights unless the statute otherwise intends. Strict construction is one which limits the application of the statute by the words used. It has also been held and observed that according to Sutherland, "strict construction refuses to extend the import of words used in a statute so as to embrace cases or acts which the words do not clearly describe." It has also been held and observed that if two possible and reasonable construction can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes a penalty. It is not competent to the Court to stretch the meaning of an expressed used by the legislature in order to carry out the intention of the legislature. It is therefore submitted that in the given circumstances, continuation of major penalty is likely to act more in the form of punitive measure rather than reformative one. It is submitted that the admissions and the other aspects, are governed by the Nirma University Act and the Regulations are framed thereunder and it being a substantive law, the interpretation, should lean in favour of a student rather than against the student.

5. It is next submitted that Regulation 18 of the Academic Regulations for Admission to the University, Eligibility Criteria etc. provides for malpractice/unfair means at examination. Clause 8 of Regulation 18, provides for Examination Reforms Committee to be appointed by the Director General which, has been given a liberty to determine its own procedure of inquiry and after conducting

investigation and an inquiry to submit a detailed report to the head of the institution and therefore, the Examination Reforms Committee is at liberty to evolve its own procedure and the penalty which was imposed, was by the Examination Reforms Committee as per its own Regulation and not under Regulation 3 of the tabulated form. It is therefore urged that leniency be shown to the petitioner with a view to seeing that the year of the petitioner is not wasted and is permitted to appear in VII Semester examination so also VIII Semester examination which is scheduled to take place in near future.

6. On the other hand, Mr Dhaval Dave, learned senior counsel appearing with Mr Udit N. Vyas, learned advocate for the respondent, has vehemently opposed the entertainment of the writ petition so also grant of interim protection. It is submitted that the contention raised on behalf of the petitioner that as result of term end examination, has been cancelled it cannot be construed to be a penalty under Regulation 3 and therefore, the penalty imposed under Regulation 5(iv) would be the first penalty, such a contention, would be against the scheme of the Regulation. It is submitted that it is not in dispute that the petitioner, was found with the mobile phone during the examination which, culminated into a decision by the Examination Reforms Committee canceling the result of Semester end Examination of Family Law II of Semester VI of the petitioner. It is submitted that item no.3 of the Regulation, provides that if a student is found possessing any kind of electronics device including the mobile phone, smartwatch during the examination irrespective of whether it is used or not used, the penalty provided, is cancellation of results of whole examination. It is submitted that since the petitioner in its statement, has stated that inadvertently, it

remained in his pocket, that a lenient view was taken and instead of canceling all the examination, that the result of Semester end Examination of Family Law II of Semester VI was cancelled. Showing the leniency would not mean that the penalty was not under Regulation 3.

7. It is submitted that the petitioner, wants his misconduct, committed during the VI Semester to be judged on the basis of the nature of the penalty and not the misconduct, which, would be impermissible. It is submitted that if one is to go by the contentions raised by the learned advocate for the petitioner, it would mean that the petitioner, would be covered by the Regulation 2 which provides that if a student is found with relevant written/printed material in any form of minor nature during examination, the punitive measure provided, is cancellation of result of term end examination of the concerned course. In the present case, when the petitioner, was found with the mobile phone that the result of the Semester end Examination, was cancelled which would definitely be attracted by the Regulation 3. Therefore, such submissions, cannot be accepted. It is submitted that the interpretation to the Regulations, should not be subservient or else, the sanctity of the Regulations which, aims at maintaining the academic discipline would be frustrated. It is submitted that the petitioner, is not disputing that he was found with the mobile phone. The petitioner, is also not disputing that the penalty which has been imposed, was as per Regulation 3; however, what the petitioner wants is that since the penalty imposed was only of cancellation of the term end examination result and not the other penalties that the misconduct in question, shall be considered as first misconduct.

8. Reliance is placed on the judgment in the case of *Director*

(Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh & Others v. Vaibhav Singh Chauhan reported in (2009) 1 SCC 59. It is submitted that facts are identical inasmuch as, the respondent therein, was found committing malpractice as he was found with slip which, contained the material relevant to the examination. The writ petition was filed before the Delhi High Court which, vide interim order, permitted the respondent to appear in the examination with a clarification that appearance of the petitioner, shall not create any equities in his favour and the result, would be kept in a sealed cover. The petition, came to be allowed and the judgment, was unsuccessfully challenged before the Division Bench. While allowing the appeal, the Apex Court, has held and observed that 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. It is therefore urged that considering the misconduct, no leniency should be shown to the petitioner who, has undisputedly resorted to unfair means in the examination.

9. In the brief rejoinder, Mr Aaditya D. Bhatt, learned advocate, submitted that there lies a fallacy in the submission of the learned senior counsel when it is urged that the petitioner was caught red handed. In fact, it is not the case of either the institution or the petitioner that he was caught red handed, in fact, the petitioner, has deposited the phone which, remained inadvertently in his pocket. It is submitted that it is also not the case of the petitioner that the case, of the petitioner, would fall under Regulation 3. At the cost of the repetition, it is submitted that the earlier misconduct for which, the petitioner was punished, cannot be said to be misconduct or the punishment under Regulation 3 but, that was as per the procedure

evolved by the Examination Reforms Committee which was imposed and therefore, Regulation 5, could not have been invoked. It is submitted that the petitioner, regrets the misconduct which, has been committed, and urges for sympathy of this Court.

10. Heard the learned advocates appearing for the respective parties.

11. The petitioner, had appeared in the Semester end Examination of Law of Taxation Semester VII and the petitioner, was found with 19 printed material (on both sides) and as a result whereof, the result of all the examinations (CE/LPW/PW/SEE/TEE) of Semester VII of B.Com. LL.B.(Hons.) December 2022 were declared as cancelled.

12. The respondent, has published the information booklet of 2022 providing for general information. Section 2 of the said Regulations, is titled Rules and Regulations. Regulation 2.3, which is relevant for the present purpose, provides for Academic Dishonesty at Examinations/Tests/Assignments & Punishment in case of using unfair means. The said Regulation, contains the nature of unfair practices and punitive measures. The nature of unfair practices, are set out in the tabulated form under the title nature of penalties providing nature of punitive measures. Sub-clause (iii) of Regulation 3 provides that if a student is found possessing any kind of the electronic devices including mobile phone/smart watch, except simple calculator (wherever allowed) during examination irrespective of whether it is used or not used, the nature of punitive measures provided, is cancellation of results of all examinations (CE/LPW/PW/TEE) of the concerned courses. It is not in dispute that the petitioner, while appearing in the end semester examination for

Semester VI in the subject of Family Law II was found carrying a mobile device in the examination hall. Though, carrying the mobile phone in the examination hall is strictly prohibited under the Academic Regulations, it is claimed by the petitioner that inadvertently, the mobile phone remained in his pocket and immediately realizing, he tendered the mobile phone to the invigilator.

13. Regulation 3 of the Regulations, does not draw any distinction as, it provides that if a student is found possessing any electronic device whether it is used or not used, therefore, the stand of the petitioner that it inadvertently, remained and that it had not been used, would be of no significance and carrying a mobile phone, would be a misconduct. The Examination Reforms Committee, in its meeting dated 22.3.2022, recommended to impose the punitive measures i.e. the result of semester end examination of Family Law II of Semester VI of B.Com. LL.B., to be cancelled. It is fairly conceded by Mr Aaditya Bhatt, learned advocate, that the said decision, has not been challenged and accepted by the petitioner. In the VII semester examination, the petitioner, is found having taken recourse of the unfair means for, the petitioner, was possessing 19 printed material (printed on both sides) in the semester end examination of Law of Taxation and considering it a second time misconduct, that the Examination Reforms Committee, in its meeting, held on 2.1.2023, recommended imposition of the penalty of cancelling the results of all the examinations (CE/LPW/PW/SEE/TEE) of all the courses of Semester VII of the B.Com. LL.B.(Hons.) December 2022. It is not disputed by the petitioner, that he has not indulged in such unfair means; however, the only defence the petitioner, has taken is that the misconduct or

the recourse to the unfair means in the VI Semester cannot be construed to be unfair practices in view of the earlier punishment imposed of cancellation of the result of only term end examination and not the result of CE/LPW/PW; however, the petitioner, has lost the sight of the fact that possessing the mobile phone, itself is a misconduct for which, the penalty provided, is cancellation of the results of all the examinations merely because the examinations of CE/LPW/PW was not cancelled doesn't mean that Regulation 3, has not been invoked. Pertinently, Regulation 3, provides that if a student is found possessing any kind of electronic devices including mobile phone etc. during the examination irrespective of whether it is used or not used, the same, is construed to be a misconduct and therefore, irrespective of nature of penalty imposed, the misconduct would definitely attracted under Regulation 3.

14. Mr Dhaval Dave, learned senior counsel, is right in contending that whether the Regulation 3 was invoked or not is not to be determined on the basis of the imposition of the penalty but the same has to be seen that what was the nature of unfair means of practice committed by the petitioner. It is also not in dispute that the said misconduct, was culminated into passing of the order dated 8.6.2022 which, has remained unchallenged. Therefore, the fact remains that there was a misconduct committed by the petitioner possessing the electronic device irrespective of whether it is used or not used. Since, the unfair means practiced by the petitioner, has remained undisputed the respondent, has rightly invoked Regulation 5(iv), as the petitioner was found indulging in unfair practices in the examination; and the results of all the examinations (CE/LPW/PW/SEE/TEE) of all the concerned courses of the concerned semester were cancelled. Therefore, this Court, finds that no case,

has been made out for any interim protection for allowing the petitioner to appear in the examination.

15. Reliance placed on the judgment in the case of *State of Gujarat v. Sandip Omprakash Gupta* (supra), cannot be of any help to the petitioner inasmuch as, the principle applicable to the criminal jurisprudence, cannot be made applicable to the facts of the present case inasmuch as, the Regulations framed by the institution, as has been rightly pointed out by Mr Dhaval Dave, learned senior counsel, are aimed at maintaining the academic discipline. Apt would be the judgment in the case of *Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh & Others v. Vaibhav Singh Chauhan* (supra). The respondent therein, was found in possession of a slip containing material relevant to the examination. Since the respondent therein, was not allowed to appear in the examination that a writ petition was filed before the Delhi High Court and the respondent therein was permitted to appear in the examination, with a rider that the appearance in the examination, shall not create any equities in his favour. The results, were also directed to be kept in a sealed cover. The writ petition ultimately came to be allowed and the appeal against the judgment of the learned Single Judge, came to be dismissed. The Apex Court, pointed out that such interim orders would amount to misplace sympathy which, would be wholly uncalled for and often result in creating confusion and is destructive of academic discipline and academic standards. The Apex Court, further noted that in the academic matters, there should be a strict discipline and malpractices, should be severely punished. It has also been held and observed that if the country is to progress, one has to maintain the high educational standards and

this is only possible if the malpractice in the examination in educational institutions are curbed with an iron hand. It has also been held and observed that sympathy for students using unfair means is wholly out of place. While allowing the appeal, the Apex Court, cautioned that 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. The relevant extract of the judgment and more particularly paragraph 27, is reproduced hereinbelow:

“27. 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 Board of High School & Intermediate Education, U.P. Allahabad & another vs. Bagleshwar Prasad & another (1980) 3 SCC 418: AIR 1966 SC 875 (vide para 12), Dr. J.P. Kulshrestha & others vs. Chancellor, Allahabad University & others AIR 1980 SC 2141 (vide para 17), Rajendra Prasad Mathur vs. Karnataka University & another 1986 Supp SCC 740: AIR 1986 SC 1448 (vide para 7). 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.”

16. In view of the above, the contention of the learned advocate that the interpretation of Regulation 3, should lean in favour of the student, cannot be accepted. Merely because the penalty imposed was cancellation of term end examination, does not mean that the student, gets out of the rigor of the misconduct contained in Regulation 3. Therefore, giving a holistic interpretation to Regulation 3, it only suggest that if the student, is found possessing any kind of electronic devices, during the examination irrespective of whether it

is used or not used, the same is termed to be a misconduct and therefore, one is not to go only by the penalty imposed but the nature of the malpractices committed by the petitioner as well. It is not in dispute that the malpractice, was committed by the petitioner and to suggest that the instant misconduct would not be covered by Regulation 5(iv), such suggestion, is difficult to be accepted.

17. Under the circumstances, the request of the petitioner allowing him to appear in the examination, cannot be considered at this stage and is therefore, rejected.

18. Let the matter appear on 1.5.2023.

RAVI P. PATEL

(SANGEETA K. VISHEN,J)