

A.Abinash. Vs. the Commissioner of Technical Education, and ors.

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Court : Chennai

Decided On : Aug-18-2010

Judge : K.B.K.Vasuki, J.

Acts : Constitution Of Indian - Article 226

Appeal No. : W.P.Nos.11397 to 11401, 11485 to 11488, 11489 to 11492, 11493 to 11496, 11497 to 11500, 11520 to 11525, 11542 to 11545, 11546 to 11549, 11559 to 11562, 11563 to 11566, 11567 to 11570, 11571 to 11573 of 2010 and 11681 to 11684 of 2010 and MP.Nos.1 to 1, 2 to 2 and 3 to 3 of 2010 W.P.No.11397/2010

Appellant : A.Abinash.

Respondent : The Commissioner of Technical Education, and ors.

Advocate for Def. : Mr.P.Wilson; Mrs.E.Ranganayaki; Mr.R.Shivakumar, Advs.

Advocate for Pet/Ap. : Mr.ARL.Sundaresan; M/s.AL.Gandhimathi; Mr.R.Karuppan, Advs.

Judgement :

1. All the writ petitions are directed against identical show cause notice dated 21.5.2010 in No.184/AUCBE-R/CEO/2010 issued by the first respondent/the Commissioner of Technical Education in and under which, the petitioners/students are called upon to make their representations as to why the result of the first year semester examination held in February 2010 should not be cancelled and as to

why they should not be debarred from writing further examination for two more years for the malpractice of mass copying committed by them.

2.The facts leading to the institution of batch of writ petitions are as follows:

The third respondent herein viz., Archana Institute of Technology was established during the academic year 2009-2010 and the petitioners and few others totally numbering 123 students were admitted in four branches of Engineering Courses viz., Civil Engineering, Mechanical Engineering, Electronics and Communication Engineering and Computer Science Engineering. The first semester examinations were held in January 2010 and the results of the first semester examination were declared in February 2010. Out of total strength of 123 students, 122 students passed out in all the subjects having secured marks approximately 82 to 85% and only one student failed in one paper. After the results were declared, the Management published advertisements in the newspaper on 1.3.2010 and 2.3.2010 congratulating all the students. Such paper advertisements, gave rise to representation in the form of complaint on the same day i.e. on 2.3.2010 by the members of the Association of Management of Coimbatore Anna University Affiliated Colleges to the Vice Chancellor, Anna University to the effect that the percentage of pass is highly greater than that of the University average pass percentage and the same is susceptible that some kind of malpractice could have been motivated and encouraged by the authorities who conducted the examination and hence, the same required thorough investigation by appointing a committee to scrutinise the answer scripts.

3.Annna University, Coimbatore (hereinafter shortly referred to as 'AUCBE') to which the third respondent institution affiliated has simultaneously suo motto taken up the issue and constituted an enquiry committee consisting of one Syndicate Member as Convenor, Head of the Department of Chemistry, Professor of Mathematics and Principal of Knowledge Institute of Technology, Salem as its members to enquire into the same and submit a report in this regard. The Anna University has also simultaneously called upon the Principal of the third respondent institution to produce the originals of the communications of the AICTE or AUCBE to substantiate its claim made in the newspaper advertisements as if its

academic excellence is certified by the authorities referred to above.

4. In the meanwhile, the enquiry committee referred to above submitted its report on 15.3.2010. As per the report, some of the answers in almost all the subjects written by the students were verbatim same in all the answer sheets of the students and one of the questions in mathematics was initially answered wrongly by 85 students, then the wrong answer was struck off and thereafter, correct answers were written which are verbatim the same. The enquiry committee in its report dated 15.3.2010 has also opined that two or three kinds of answers for the selected questions might have been prepared and circulated among the students during the examination and the students might have copied in random order. Based on which, AUCBE by its order dated 16.3.2010 in Lr.No.095/AUCBE/R/R1/Malpractices/2010 arrived at a conclusion that there is strong evidence relating to mass copying in the examination held in the third respondent college. As a result, the University has decided to cancel all the first semester examinations held at the third respondent College during January 2010. AUCBE has also issued a press release on the same day that it is proposed to take necessary action against the Institution and also against the persons involved in the conduct and supervision of the above examinations and show cause notice will also be issued to disaffiliate the above institution. Following the same, AUCBE has issued a letter to the Principal of the third respondent college to direct the staff members who have acted as Internal Invigilators, Chief Superintendent and EMS Coordinator during the first semester B.E./B.Tech Degree examinations held at Archana Institute of Technology, Krishnagiri during January 2010 to meet the Vice Chancellor, Anna University, Coimbatore, Jothipuram Post, Coimbatore on the date mentioned in the letter and also directed the institution to furnish the Proforma 1 to Proforma 10 prepared for such examination.

5. Aggrieved over the said order, the writ petitions were filed by the third respondent college and by some of the students numbering 41 in W.P.Nos.5552, 5915 and 7568 of 2010 for quashing the order issued by AUCBE dated 16.3.2010 thereby cancelling the first year semester examinations held in the college during January 2010. All the writ petitions were commonly heard and seriously contested by both sides. According to the petitioners/institution as well as the students, the

impugned order of cancellation is baseless and unfounded and the same is vitiated by bias as it is based on the enquiry report of the committee consisting of the professors of some of the complainants' colleges and the impugned order is passed without any notice and without any opportunity to the institution as well as the students through personal hearing to disprove the correctness of the enquiry report. The claim of the petitioners is vehemently opposed on the side of the Higher Education Department and the AUCBE on the ground that there is strong proof to show that mass copying was committed in the college and the impugned order of cancelling the first year semester examination is passed only in the interest of public at large without any other motive. It is also submitted on behalf of University that the University is willing to appoint a fresh panel, in the event of constitution of the earlier committee being held to be bad, to go into the answer scripts to verify as to whether there was any mass copying or not. The University has also suggested the names of the members of fresh panel of experts.

6.All the writ petitions were disposed of by common order dated 16.4.2010 by setting aside the impugned order and the matter was remitted back to the competent authority of AUCBE to decide the issue afresh as to whether any action is warranted with regard to the higher percentage of pass in the first semester B.E. Degree examinations held in January 2010 in the college in question. Our High Court has held so, mainly by accepting the contention raised on the side of the petitioners that the impugned order is vitiated by bias as it is based on the report of the four members committee consisting of the members of complaining colleges against whom there is a plea of reasonable likelihood of bias. Our High Court has after analysing the issue of plea of bias in the light of the observations of the Supreme Court in the decisions reported in (1985) 4 SCC 417 (Ashok Kumar Yadav v. State of Hariyana) and by applying the ratio laid down in the judgments of the Supreme Court in (i) AIR 1970 SC 150: 1969 2 SCC 262 (A.K.Kraipak v. Union of India) and (ii) (2009) 11 SCC 84 (A.U.Kureshi V. High Court of Gujarat) concluded that the constitution of the four members committee to go into the allegation made by the association of management is found improper and the decision taken by the Vice Chancellor on the same day based on the report of such Committee is unsustainable. However, Our High Court has while doing so, left it to the discretion of the competent authority of Anna University to decide the

matter afresh as to whether any action is warranted with regard to higher percentage of pass in the first semester B.E. Degree examination and whether there is sufficient material to enquire into the allegations levelled against the students of the petitioner's college and in the event of the appropriate authority decides to go further to appoint the committee of experts as suggested by the learned Senior counsel for the University.

7.While deciding so the issue regarding issuance of notice to individual student is also raised on the side of the writ petitioner. It was argued that if the competent authority decides to proceed further in the matter, they may be directed to issue notice to the students as well as the management before issuing any further order so as to enable them to establish their innocence before passing any adverse order in this matter. The same was objected to by the Special Government Pleader and the learned Senior counsel appearing for the University that individual notice need not be issued to the students when the allegations of mass copying is levelled against them. Both the petitioners as well as the respondents relied on the Supreme Court decisions in support of their contentions. However, our High Court was not inclined to express any opinion about the issuance of notice to the students individually and our High Court has left that issue also to the decision of the appropriate authority and has observed that if the authority decides to proceed further, the authority may decide as to whether the individual students would be given an opportunity to explain their innocence, if the scrutiny of answers scripts is ordered to be made by the panel of Experts to be nominated by the competent authority. Neither the writ petitioners nor the Higher Education department or AUCBE has preferred any appeal against the common order dated 16.5.2010 as such, the same has become final and binding on all the parties to the writ petition.

8.In pursuance of the disposal of the writ petition, the matter was placed before the Syndicate for its consideration and direction in its meeting held on 30.4.2010. The Syndicate has resolved to approve the panel of Experts to verify the answer scripts as to whether there was mass copying or not. In pursuance of the resolution passed by Syndicate, the answer scripts were scrutinised by the fresh panel of Experts as suggested by the University as referred to in para 17 of the earlier order dated 16.4.2010. The panel of Experts submitted their individual reports with their findings supported by reasoning that mass copying has taken

place by either of the modes mentioned in the report. Such reports of the fresh panel of Experts are again placed before Syndicate for consideration and further direction in its meeting held on 11.5.2010. On which the date, the Syndicate has resolved to constitute a disciplinary committee consisting of the Commissioner of Technical Education as its chairman and four members who shall be professors from Anna University, Chennai dealing with subjects of mathematics, Engineering Physics, Engineering Chemistry and Engineering Graphics, but who shall not be the professors who scrutinised the answer scripts earlier and the four members are to be nominated by the Vice chancellor and the disciplinary committee is directed to make further enquiry with the students who appeared for the first year semester examination in February 2010 in the third respondent college, Hall Superintendent, Reserve Hall Superintendent Chief Superintendent and the management of the institution by issuing notices to them and to file its report before the syndicate.

9.In pursuance of the same, Anna University, Coimbatore by its order dated 14.5.2010 constituted a disciplinary committee by nominating four members having the Commissioner of Technical Education as its chairman and the same was communicated to the Commissioner of Technical Education and other members of the committee along with the copy of the reports of panel of Experts to make further enquiry based on the reports of the fresh panel of experts with the students and the staff involved in the supervisory work for the examination including Anna University representative and the Chief superintendent, the Principal of the Institution and the Management of the institution and submitted its report before the syndicate.

10.In pursuance of the same, the first respondent, who is the Chairman of the disciplinary committee has sent individual notice to all the 123 students in Letter No.184/AUCBE-R/CEO/2010 dated 21.5.2010. The notice proceeds to say that Syndicate of AUCBE in pursuance of the High Court's order has resolved to proceed further by appointing a fresh panel of Experts to scrutinise the answer scripts in question and the Expert committee constituted in this regard arrived at a conclusion that there was mass copying and on the basis of the Expert reports, Syndicate has constituted the disciplinary committee and the same has to after

giving reasonable opportunity to 123 students, submit its report to the university. It further proceeds to say that the individual students are found to have committed malpractice of mass copying as such the students are individually called upon to make their representations as to why not the results of the first year semester examinations should not be cancelled and the students were debarred by writing two more years for the malpractice committed by them. The students were directed to submit their written representations within 10 days from the date of receipt of that letter and were also given liberty to appear in person before the disciplinary committee on 4.6.2010 at Govt. College of Engineering, Bargur to put forth their defence and in the event of their failure to submit their explanation within the time stipulated, it shall be presumed that no representation was made and further action shall be pursued based on the available records and evidence. Challenging the validity of the said individual notices, the present batch of writ petitions came to be filed.

11. In all the writ petitions, it is categorically argued by all the learned counsel appearing for the petitioners that the impugned order purported to be the show cause notice is issued with premeditation about the further action to be taken in the matter of imposing penalty and the opportunity sought to be given in the notice is only post decisional opportunity and no notice or opportunity was given to the students by the appropriate authority before taking a decision to initiate action with regard to higher percentage of pass and before constituting a committee to scrutinise the answer scripts and the stereo type of notices are issued by the disciplinary committee merely based on the report of expert committee who are said to have scrutinised the papers and whose reports were accepted by the Syndicate behind the back of the petitioners and therefore, the impugned notice is arbitrary, illegal and violative of the principles of natural justice. It is also contended that the opportunity sought to be given to the petitioners is only a formal procedure that too for imposing penalty and the enquiry which is sought to be held is a futile exercise and is neither likely to serve any purpose nor alter the decision already arrived at by the committee. It is further argued by the respective counsel appearing on the side of the petitioners that there was no mass copying and there was no complaint of malpractice committed during the examination and the committee constituted consists of members of outside university and is without

any authority and the verbatim answers given in the answer scripts cannot be the basis for suspecting malpractice of mass copying as the similarity or identity in answers may be due to the preparation from the same text books which are common for all and it is not impossible or impractical to reproduce the steps in the same order and in answering the questions in the same pattern which is taught to them and by memorising and learning. One more grievance raised on the side of the petitioners is that the impugned notice is issued on 21.5.2010 calling for the representations of the students within 10 days when the second semester examinations were scheduled to be commenced on 4.6.2010 thereby the students are sought to be pressurised and harassed on the verge of commencement of the examination on 4.6.2010 and such action is arbitrarily illegal and unjust.

12. On the other hand, it is argued by the learned Additional Advocate General appearing for the respondents that the fresh expert committee is constituted in pursuance of the order of the High court and in pursuance of the decision taken by the Syndicate of university who is the competent authority and the expert committee scrutinized the answer scripts and found that there is strong evidence for mass copying by circulating the answer materials in bunches and by allowing the students to write beyond the stipulated time and by displaying the answers to the questions in the examination halls and by making the answers available to the candidates in multiple print outs of single solution etc. The committee report was duly approved by syndicate who constituted a disciplinary committee and all the four members of the disciplinary committee belonging to Anna university and Syndicate delegated its power to the disciplinary committee appointed for specific purpose and the impugned show cause notice is issued only in compliance with the principles of natural justice and the reports of the expert committee is not final and the final decision will be taken only by the syndicate after considering the representations of the petitioners and other staff members. Though no individual notice is necessary, every student has been through the impugned notice given due opportunity to prove his/her innocence before the disciplinary committee and the impugned notice is not vitiated by any illegality or infirmity and as it is only a show cause notice, it cannot be questioned at this stage.

13.The respective learned counsel appearing for the petitioners as well as the learned Additional Advocate General have also cited catena of judgments laying down the principles of law for and against the contentions raised on both sides.

14.Heard the rival contentions made on both sides and perused the materials available on record.

15.The present batch of writ petitions are the second round of litigation. Earlier batch of writ petitions were filed against the order of cancellation of the first year semester examination held in January 2010 on the basis of the earlier committee report with a finding that mass copying has taken place and the present impugned order is the out come of further proceedings taken in pursuance of the directions of this Court in the earlier writ petitions. As already referred to above, the order dated 16.4.2010 made in the earlier batch of writ petitions is not challenged either by the writ petitioners or AUCBE as such, the earlier order dated 16.4.2010 has become final and binding on all the parties of the writ petitions. The order made in the earlier writ petitions is enclosed at page 4 of the typed set of papers dated 11.3.2010. In the earlier order, our High Court has made certain observations which are extracted hereunder:

12. There was no complaint from the Invigilators or Supervisors, of whom some of them are admittedly from other colleges. The answer scripts were valued by the examiners and nothing was found against the students and no complaint was received from the examiners, who valued the answer scripts. ---Merely because there is higher percentage pass than the average results of the University, one cannot come to the definite conclusion that there was mass copying.

13. ---After scrutiny of the papers, the committee found prima facie materials of copying and submitted a report, based on which, the impugned order cancelling the examinations was passed on the same day by the University viz., Vice chancellor and the order was issued by the Registrar.

14.The said report is attacked by the petitioners by contending that the members of the four Member committee are inimical towards the Archana Institute of Technology and its students as the said institute has not become a member of the

Association of the managements and the committee members approached the issue in a biased manner to sustain the complaint given by the Association of Management. There is some substance in the said contention raised by the learned counsel for the petitioners as it is well settled in law that "Justice must not only be done, but must also appears to be done". The allegation of bias must be ruled out to maintain purity in administration and to maintain confidence on the persons, whose rights are affected by the decision.

16. ..the constitution of Four Member committee to go into the allegations made by the Association of Management is found improper and the decision taken pursuant to its report is unsustainable.

17...The name of the members of fresh panel of experts suggested by the learned senior counsel for the University are as follows---The learned senior counsel as well as the learned counsel appearing for the petitioners/students have not objected the new names suggested by the university, however submitted that there is no material available to scrutinise the answer scripts and merely because the students have faired well in the examinations, they need not be penalised by conducting scrutiny of answer scripts. 18.--I am not expressing any opinion on the findings given by four member committee. ---Since there is allegation against the constitution of four member committee by the Vice chancellor and hasty decision was taken by the Vice chancellor on the day when the report was submitted, it is better if the issue is placed before the competent authority to go into these aspects and shall decide whether there is sufficient material to enquire into the allegations levelled against the students of the petitioner college. The appropriate authority on satisfaction can appoint a committee of experts as suggested by the learned senior counsel for the University. 19.The learned Senior counsel and the learned counsel for the petitioners strenuously argued for issuing any notice before issuing any further order if the competent authority decides to proceed further in the matter.---there may not be any difficulty in issuing notice to the students before passing any further order so that principles of nature justice would be complied with.... On the contrary, the learned counsel for the University as well as learned Special Government Pleader cited ---and contended that no individual notice need be issued to the students while there is allegation of mass copying. 20.Since I am

setting aside the order after accepting the plea of likelihood of bias against the Four Member Committee and remitting the matter to the competent authority for considering the issue afresh, I am not expressing any opinion about the issuance of notice to individual students who are numbering 123. However if the authority decides to proceed further in the matter, the number of students being 123 and all the said students were already declared pass in the first semester examinations, the authority may bear-in-mind and decide as to whether the individual students would be given an opportunity to explain their innocence if the security of answer scripts is ordered to be made by the panel of experts to be nominated by the competent authority. 21. On the basis of the above findings, the impugned order is set aside the matter is remitted back to the competent authority of Anna University, Coimbatore to decide the issue afresh as to whether any action is warranted with regard to the higher percentage of pass in the first semester B.E. Degree examinations held in January 2010 in Archana Institute of Technology, Krishnagiri. The writ petitions are disposed of accordingly. No costs. Connected Miscellaneous Petitions are closed.

16. The reading of relevant portions of the order passed by our High court in the earlier writ petitions batch reveals that Syndicate who is the competent authority to deal with the issue is to entirely decide as to whether any action is warranted with regard to the higher percentage of pass and as to whether there is sufficient material to proceed to go into the allegations levelled against the students. It is further directed in the said order that in the event of AUCBE to proceed further, the appropriate authority can appoint a fresh panel of experts from the names as suggested by the learned Senior counsel for the University to scrutinise the answer scripts and it is again for the same competent authority to consider as to whether the individuals numbering 123 students have been given an opportunity to explain their innocence if the scrutiny of answer scripts is ordered to be made by the panel of experts to be nominated by the competent authority.

17. In this connection, the learned counsel for the petitioners has raised the following serious objections in this batch of writ petitions:

i.Syndicate has no authority to initiate action to appoint either fresh panel of experts or disciplinary committee with delegation of the power vested upon them to go into the allegations against the students?

ii.There is no sufficient material to enquire into the allegations levelled against the students of the petitioners' college and mere good performance in the examination will not warrant any disciplinary action.

iii.The action taken by the syndicate at every stage to proceed further and in appointing fresh panel of experts to scrutinise the answer scripts and to appoint disciplinary committee, based on such report without giving notice to the petitioner and without giving them an opportunity of being heard is in violation of the principles of natural justice; and

iv.The impugned order of the disciplinary Committee with pre-determination of the issue that too, basing on the report of the panel of experts without any independent material is tainted with malafide, bias, unfairness and arbitrariness.

18.In this regard, the first aspect to be seen is as to whether the Syndicate of Anna University has any authority to initiate action and to appoint a fresh panel of experts and as to whether it is proper on its part to proceed to go into the allegations against the students. This issue is already answered by our High court in the earlier writ petition. Our High court has in clear terms, that too, on the basis of the contentions raised on the side of the writ petitioners therein, held that under the relevant provision of Anna University Act, Syndicate is the competent authority to decide about the conduct of the University examinations and to approve and publish the results thereof, under Section 22(1)(a) which deals with institution of degrees, titles, diplomas and other academic distinctions. Our High court has by holding so, remitted the matter to Syndicate who is the competent authority of AUCBE to decide the matter afresh.

19.The High court without expressing any specific opinion, deemed it fit to leave it to the decision of the competent authority of AUCBE. As a matter of fact, what was challenged before our High court and the earlier occasion was not the decision taken by University and the authority of the University to take such decision to hold

an enquiry against the allegations raised against the students of the third respondent Institution but only against the order passed by the University thereby cancelling the first semester results. Neither the decision taken to enquire into the allegations nor the appointment of the four member committee to scrutinise the answer scripts were seriously challenged in the earlier writ petitions. The constitution of the four member committee is of course challenged but not on the ground that Syndicate has no authority to do so under the Anna University Act, but only on the ground that the committee members having been selected from some of the complainants' colleges is biased and only by accepting the plea of likelihood of bias against the four member committee, the High Court was pleased to set aside the order impugned therein, which is based on the report of such four member committee. The High Court in the said order has also permitted the competent authority to appoint a fresh panel of experts as suggested by the learned Senior counsel appearing for the University.

20.As a matter of fact, one of the writ petitions in the earlier batch viz., W.P.No.7568 of 2010 filed by some of the students was one seeking issuance of a writ of Certiorarified Mandamus to quash the order of the first respondent University thereby cancelling the tentative examination schedule and to direct the first respondent to form a fresh panel of experts to conduct an enquiry apart from Anna University, Coimbatore and file a report to the first respondent University. The other two writ petitions filed by few of other students and the Management were only for quashing the order of Anna University in cancelling the first semester B.E Degree examination. The fresh panel of experts freshly appointed is from the name of the persons already suggested by the learned senior counsel for the University and accepted by the High court. As such, the petitioners cannot be now permitted to say that the petitioners ought to have been given notice even before the University deciding to proceed further and before the constitution of fresh panel of experts for scrutinising the answer scripts and against the selection of panel of experts.

21.In the considered view of this Court, once it is brought to the notice of the Syndicate about the possibility of commission of some kind of malpractice in the conduct of examinations in the third respondent institution, the Syndicate who is

vested with the power to exercise overall superintendence in the matter of conduct of examinations and publication of results and to issue degrees, titles, diplomas, etc. is but enjoined with the duty to ascertain the genuineness of the allegations. It is for the Syndicate to satisfy itself that the degrees issued by them is only to those genuine students who gained well in the examinations and not through any unfair means and no foul play is involved therein. The contention raised on the side of the petitioners is that no similar action was taken against the other colleges viz., KPR Engineering College, Avinashi, Kumarasamy College of Engineering, Karur, Excel Engineering College, Namakkal, who have also secured high percentage of pass and the University is very slow in dealing with the other malpractice which are brought to its notice and there are number of complaints regarding the malpractice pending without any progress etc. cannot be a ground to nullify the present decision taken by the University to go into the allegations of an act of mass copying by 123 students of the third respondent institution.

22.As a matter of fact, the second respondent has in his counter affidavit filed in W.P.No.11684 of 2010 at para 15 suitably replied the allegations so raised as if there is failure on the part of the University to deal with those incidents of malpractices and the issue relating to the third respondent institution is unduly magnified. The second respondent has in para 17 given the particulars regarding the number of complaints received, number of cases dealt with and the nature of punishment imposed to the wrong doer by the University etc. That being so, the petitioner's contention that the decision taken to hold an enquiry to go into the allegations made against the third respondent institution is so arbitrary, baseless and without any application of mind has to be necessarily ignored.

23.In so far as the contention raised that the University ought to have given notice to the petitioners before taking such decision is concerned, the same is also legally untenable. It is for the authority concerned to decide as to what would be an appropriate action to be taken in the given situation and it is not for anybody else that too, not the students who is allegedly involved in the commission of the action complained of, as such the question of giving notice to anyone particularly the students against whom the allegations were made at the initial stage of deciding appropriate further course of action does not at all arise herein.

24.The learned counsel for the petitioners would further strenuously argue that not only the decision to constitute a fresh panel of experts that too without notice to the petitioners, but also the constitution of a fresh panel of experts and the selection of four members and the job of scrutinising the answer scripts entrusted to them are vitiated by malafide, bias and unfairness and the same are in contravention of the directions issued by our High Court and in violation of the principles of natural justice.

25.As rightly argued by the learned Additional Advocate General, no purpose is likely to be served by giving notice to the students even at this stage. Our High court has made it very clear in the earlier order that it is for the competent authority to decide to proceed further and in that event, to appoint a fresh panel for experts for the purpose of scrutinising the answer scripts. Though our High court has at the end of para 20 of its judgment observed that if the authority decides to proceed further in the matter, the authority may, taking note of the fact that number of the students being 123 and all of them were already declared as pass, further decide whether individual opportunity be given to the students to explain their innocence before scrutinising the answer scripts is to be made by the panel of experts nominated by the competent authority, the earlier order does not make it mandatory on the part of the competent authority to do so. One such occasion to call upon the students to have their say is likely to arise only after scrutinising the answer scripts by the fresh panel of experts and in the event of fresh panel of experts rendering any adverse finding against the students, pursuant to scrutinizing the answer scripts. Thus, the action of the Syndicate in constituting fresh panel of experts for the purpose of scrutinising the answer papers on its own does not suffer from any infirmity or illegality as seriously contended on behalf of the petitioners.

26.Next comes the issue relating to availability of sufficient materials on the basis of which the Syndicate decided to proceed further. Here again, it is seriously agitated on the side of the petitioners. At this juncture, it is to be pointed out that the earlier report filed by the four member committee to the effect that there is enough material to make out the case of mass copying, was set aside by this Court because of the plea of likelihood of bias. In the present case, Syndicate has

suo motto decided to proceed further to go into the allegations levelled against the students and a fresh panel of experts was appointed to scrutinise the answer scripts who filed the report on the basis of which disciplinary committee is constituted to hold a detailed enquiry.

27.The learned counsel for the petitioners then seriously questioned the validity of the action taken by the Syndicate mainly based on the report given by the fresh panel of experts thereby questioning the sufficiency or otherwise of the material to proceed further into the allegations levelled against the petitioners to be gone into. The learned counsel for the petitioners have also relied upon so many factors such as the sitting position of the students, the presence of the University representative and outside Invigilators inside the examination hall within the college campus and the absence of any complaint regarding mass copying either from such Invigilators and University representative, the variation in the marks secured by the candidates, the higher percentage of pass with high marks secured by the other colleges and the observation of the High Court made in the earlier writ petitions to that effect that high percentage of pass may not indeed be the basis for any action etc.

28.The facts made available herein would reveal that the first semester examination was held in the third respondent institution and numbering 123 students were accommodated in two halls and 50% of invigilators were from outside colleges and one of the representatives of the University was also present on the date of examination and there was no complaint what so ever about either individual or mass copying either from the University representative or from any of the Invigilators or from the examiners who corrected the answer scripts and there was variation in the questions answered, answers written and marks obtained by the individuals etc. The doubt about the possibility of commission of mass copying arose only after the publication of results mainly because of the high percentage of pass with high marks secured by the college that out of the total strength, all the students passed through with high marks except one student even that one student failed only in one subject. It may be true that the factors as referred to above may be weighed in favour of the petitioners, had there been no other material available in the shape of enquiry reports. It may also be true that there

was no material at all available at the time when the enquiry was ordered on the first occasion, wherein, the enquiry was ordered by the University only on the basis of the complaint received from the other colleges and from the advertisement published in the paper congratulating all the students of the third respondent institution. However, none of the petitioners have in the earlier writ petitions seriously questioned the decision of the University to hold an enquiry into the allegations.

29. What was seriously challenged in the earlier writ petition is the constitution of four member committee that too, on the ground of plea of likelihood of bias against the four members selected from the complaining colleges. Accepting the same and also taking note of the fact that further order for cancellation of the first semester examination results was made by the then officiating Vice chancellor on the same day on which the enquiry report was received, the High court was pleased to set aside the same. Though the petitioners have made an attempt to raise the plea of want of sufficient materials in the earlier writ petitions, the same was not seriously pressed into service. The point raised so, was also not seriously considered by our High court except observing that fairing well in the examination by itself cannot lead to a conclusion that there was mass copying. Our High court did not also express any specific opinion on this aspect and observed that it was left open to the decision of the appropriate authority to decide the same.

30. Unlike the earlier occasion the present decision to hold enquiry into the allegation is based on some materials i.e. earlier enquiry report of the four member committee. It is to be noted at this juncture that the contents of the earlier report was also not seriously challenged as baseless on the earlier occasion. Our High court found the constitution of the four members committee as improper and held that decision taken pursuant to its report is unsustainable only by accepting the plea of likelihood of bias against the four members. Neither the petitioners nor the High Court has either incidentally or primarily discussed the contents of the report.

31. Even otherwise, in my considered view, it cannot be said that there are absolutely no material to support the decision of the Syndicate to hold an enquiry, there are some materials to show that few answers are verbatim the same and the

questions relating to diagram in the subject of Engineering Graphics, is answered uniformly. Though it can be argued that the same are not sufficient enough to arrive at a final conclusion that there was mass copying the same are sufficient enough to raise a suspicion in the mind of the authority concerned, as to whether commission of any act of malpractice of mass copying can be ruled out or not and the same can form the basis for deciding to proceed further to ascertain the genuineness or otherwise of the allegations against the students of the third respondent institution. It is not only in the interest of the educational field, but also in the interest of third respondent institution as it provides a platform to the students as well as the management to prove their innocence. So, this Court is of the view that the Syndicate has rightly taken the decision to proceed to go into the allegations and to appoint a fresh panel of experts to scrutinise the answer scripts and to constitute a committee to hold detailed enquiry which is the only way to find out the truth of the allegations.

32. The fresh panel of experts have after scrutinising the answer sheets submitted their report to Syndicate. The reports are enclosed at page nos. 120 to 123 of the typed set filed on behalf of the second respondent. The fresh panel of experts nominated were attached to the department of different subjects such as, physics, Chemistry, Mathematics and Mechanical Engineering and they have been entrusted with the job of scrutinising the answer sheets of the subject relating to their department. The reports filed individually by the Professors of the different subject disclosed that the answer papers were personally scrutinised on single day on 5.5.2010, 6.5.2010 and 8.5.2010 by them and all the experts were invited to the University campus where the answer scripts were scrutinised individually between 9.30 am and 6.30 am. Though it was argued on behalf of the petitioners that it is humanly impossible to make comparative study of all the papers relating to 123 students within one day, the same was denied on the side of the respondents. It is stated in para 8 of the counter affidavit that the Registrar of the University has co-ordinated with the above experts and the answer scripts of the concerned subject were placed before them and they completed their assignment before 6.30 pm and submitted the report. Even assuming it to be true that it is impossible to make comparative study of answer scripts of all 123 students, the time is sufficient enough to make comparative study of substantial number of answer scripts so as

to arrive at prima facie conclusion. In my considered view, the amount of evidence required to decide as to whether to go further or not is not full proof report but such report sufficient enough to point at the possibility of commission of an act of malpractice. The job assigned to the panel of experts is in the nature of preliminary enquiry to ascertain as to whether it is the fit case which warrants thorough examination into the allegations or not. If it is viewed so, the contents of the reports so submitted by the experts are sufficient enough to influence the mind of Syndicate to proceed further to ascertain the truth or otherwise of the allegations raised against the students.

33.As a matter of fact, this Court has also collected few answer scripts having dummy numbers in each subject and the comparison of answer scripts would show that there is some substance in the report of the fresh panel of experts that the students might have had the assistance from outside source. In that event, either the presence of the students or their opinion is immaterial before taking a decision to entrust a fresh panel of experts with the assignment of scrutinising the answer scripts or at the time of when the experts were scrutinising the answer sheets. Only after the report of the panel of experts are received and only in the event of the same being adverse, the question of calling upon the students to have their say upon the contents of such report and giving them sufficient opportunity to disprove the genuineness or otherwise of the contents of the report will arise and the petitioners cannot be said to be prejudiced in any manner either by the constitution of the panel of experts whose names were already made known to them or by entrusting the assignment of scrutinising the answer scripts to such experts. As already referred to, this is what the relief sought for by few of the writ petitioners on earlier occasion. Even the students are well aware that unless and until the answer scripts are scrutinised, the truth will not be brought to light. Inasmuch as the report of the fresh panel of experts which are the outcome of such scrutiny of answer scripts by them do contain some materials to prima facie form an opinion that there is reasonable possibility of mass copying by all the students or some of the students, the same cannot be lightly brushed aside but must be treated as such a serious issue which warrants thorough examination. As rightly observed by the Supreme Court in (1998) 9 SCC 236, (Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasara Samiti and others) in such a situation, it

is likely that some innocent students become victims of such misbehaviour of their companions, but it is difficult for the Syndicate to identify those persons indulged in such act of malpractices.

34. At this juncture, the observations of the Hon'ble Apex Court and our High Court in the judgments cited by the respondents are also to be suitably recollected and reproduced hereunder:

(i) In 1970 (1) SCC 648 (The Bihar School Examination Board vs. Subhas Chandra Sinha and others), the Supreme Court has observed in identical circumstance that though no one had complained about the examination, it need not detain the Court. Tabulators (Panel of experts, herein) to send their remarks on which investigation was made and the Unfair Means Committee and the Moderators gave their opinion. There were sufficient materials for taking action. There was no need to wait for a complaint, nor a complaint was necessary.

(ii) In another case reported in (2000) 3 SCC 59 (Chairman, J & K State Board of Education v. Feyaz Ahmed Malik and others), the Supreme Court is of the opinion that the Educational Board (University, herein) is entrusted with the duty of maintaining higher standards of education and proper conduct of examinations. It is an expert body consisting of persons coming from different walks of life who are engaged in or interested in the field of education and have wide experience and the decision of such an expert body should be given due weightage by Courts. In the same judgment, the Supreme Court referred to the decision of Allahabad High Court reported in AIR 1987 All 208 (Rajiv Ratna Shukla v. University of Allahabad) and extracted the relevant portion of the judgment that "Even otherwise the statute and ordinances provide for an authority known as Examination Committee to look into and decide such matter. As the Examination committee after looking into the report was satisfied that the Examinations were not conducted fairly it would be unfair for this court to interfere in writ jurisdiction. It need not be mentioned that a finding recorded by a tribunal, administrative or quasi-judicial body, is a finding of fact if it is based on consideration of evidence howsoever meagre and insufficient it may be.... Even if another committee or this Court on the same material could have come to a different conclusion it could not furnish ground for interference.

This Court cannot substitute its opinion for the opinion of the Committee.... We cannot ignore the deterioration in the standard of discipline of academic institutions. How this should be regulated or controlled should best be left to the discretion of those who are entrusted with this responsibility. If this Court starts substituting its own opinion in place of opinion expressed by authorities it shall result in chaos. It is well known that due to conduct of others even innocent persons suffer but the sufferings of few has to be tolerated in the larger interest of the society"..... Further, in para 20 of the judgment, the Supreme Court further observed that "in the matters concerning campus discipline of educational institutions and conduct of examinations the duty is primarily vested in the authorities in charge of the institutions. In such matters, the Court should not try to substitute its own views in place of the authorities concerned nor thrust its views on them. The Court has the power to intervene to correct any error in complying with the provisions of the rules, regulations or notifications and to remedy any manifest injustice being perpetrated on the candidates".

(iii)The same view is expressed by the Supreme Court in 1993 Supp (3) SCC 82 (Controller of Examinations and others v. G.S.Sundar and another), wherein, it is observed at para 10 that in the matters of enforcement of discipline, this Court must be very slow in its interference. After all, the authorities in charge of education whose duty it is to conduct examinations fairly and properly, know best how to deal with situations of this character. One cannot import fine principles of law and weigh the same in golden scales.

35.The Supreme Court has laid down the principles referred to above only while dealing with similar case of mass copying. The Supreme Court has heavily commented upon the students and the outside source whether the management or anybody else who assisted the students in committing such act of malpractice of copying and there was no mincing of words while expressing seriousness and deep concern over the factors leading to deterioration in the standard of education. The Supreme Court has also at the same time observed that the possibility of innocent students to undergo suffering while dealing with the cases of such nature cannot be ruled out. The Supreme Court even while expressing sympathy, is not inclined to leave the issue unenquired into. It is made very clear by the Apex Court

that the authority attached to the education department are alone enjoined with the duty to maintain the discipline and sanctity of the institution and are the competent person to decide as to whether there is an element of bonafide in the allegations raised against the students of third respondent institution. Once the faculty is entrusted with such authority to examine answer papers either fully or at random and arrive at prima facie conclusion that there is possibility of unfair means adopted by the students in the examination with the assistance of outside source and if the competent authority on the basis of such prima facie finding decided to proceed further, it is not for the Court to substitute and to interfere with the same. As observed by Karnataka High Court in AIR 1999 Karnataka 183 (Kum. Babitha Nugala v. Common Entrance Test Cell, Govt. of Karnataka and another) that the correctness of any such finding cannot be questioned by the Courts on the ground of insufficiency of evidence, unless or otherwise the conclusion is in such outrageous defiance of logic that no reasonable person could have arrived at and only wherein this Court through writ petition may be justified in interfering with the finding of fact.

36.The present case is also one of such cases. The main endeavour for initiating action against this College is not either to punish the students or the institute but only to maintain the sanctity of the examination in the institute and also to instill deep impression or fear in the mind of not only the students of Archana institute but also in every student that indiscipline in any manner cannot be tolerated and it does not have any place in democracy and it violates the collective interest which is necessary for building up a nation as the same amounts to conceptual erosion of the essence of democracy. Apart from that, such unfair means is also likely to guillotine the personality of the individual and also the canvass where the picture of the nation is portrayed. It is observed by Madhya Pradesh High Court in AIR 2002 MP 184 (Ku.Rolam Tiwari and another v. the Board of Secondary Education and another), that the students should rise beyond this and aspire to reach the stars (to face the examination in a moral and ethical manner) because they should remember, he who aspires for the stars, at least reaches the top of the tree.

37.As rightly argued by the learned Additional Advocate General that the very purpose of conducting the examination is to test the real knowledge acquired and

test the knowledge, competitiveness, ability and awarding certificate is for those possessing such knowledge through fair means and through timeless efforts and it is not a mere ritual but victorious pass to the College and the same cannot be allowed to be achieved by foul play and unfair means and the University who issues degree certificate have every right to adopt all kinds of supervisory measures over the Colleges affiliated to it and have equal responsibility to see that the students to whom the certificate of pass to be awarded have been possessing ability, competitiveness, knowledge for holding such degree and the same is acquired without any breach of any care play.

38.The University cannot shirk its responsibility and it is bound to exercise its supervisory power either suo motto or otherwise when there are serious allegation of susceptible means in getting higher percentage of pass by the students attached to any one of the colleges affiliated to it, particularly in view of alarming situation prevailing in the educational field weigh the education which is substantially commercialised. The words of the Supreme Court in the judgment reported in 1993 Supp (3) SCC 82 at 86, is that "The hour has come when we must clear The educational fields from poison and from fear;

We must remould our standards build them higher, And clear the air as though by cleansing fire, Weed out the damning traitors to education, Restore her to her ancient place of awe".

39.The Supreme Court as well as various High courts have laid down the principles referred to above only while dealing with the validity or otherwise of the decision taken by the competent authority to cancel the whole examination even without holding any preliminary enquiry into the allegation of mass copying. As a matter of fact, in all the cases, the Supreme Court has expressed a strong view that in such cases, the principle of natural justice have no place and the students suspected of being guilty of foul play and unfair means are not at all entitled to any notice or opportunity for being personally heard.

40.That being the legal position, this court is not inclined to interfere with the decision taken by the Syndicate of AUCBE to proceed further into the allegations against the students of the third respondent institution and in appointing four

members committee and in entrusting them with the assignment of scrutiny of the answer scripts to ascertain as to whether there is any prima facie material to call for any sort of action in respect of the complaint against the students and in accepting the report of the panel of experts as the basis for ordering thorough enquiry by appointing a separate disciplinary committee.

41. In so far as the constitution of the disciplinary committee is concerned, the same is constituted, under the Chairmanship of one of its members having the professors nominated by Anna University, Chennai as its members. In the considered view of this Court, there is absolutely no infirmity or irregularity in the constitution of the disciplinary committee by the Syndicate.

42. During the course of argument, the learned Additional Advocate General drew the attention of this Court to Section 22(1)(al), 22(1)(aw), 22(1)(ax) of Anna University Act. As per which, the University shall

(i) conduct the University examinations and approve and publish the results

(ii) exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act or the Statutes, ordinances and regulations; and

(iii) delegate any of its powers to the Vice chancellor, to a committee from among its own members or to a committee appointed in accordance with the statutes. As rightly argued by the learned Additional Advocate General appearing for the University, Syndicate is empowered to exercise its powers either on its own or by delegating any of its powers to Vice-Chancellor or to either of the committees referred to under Cl. (ax). In so far as the constitution of a panel of experts is concerned, the same cannot be held to be outside the power of Syndicate as discussed in the foregoing paragraph.

43. Such argument of the respondents is also fortified by the Supreme Court in (2000) 3 SCC 59 (Chairman, J & K State Board of Education v. Feyaz Ahmed Malik and others). In the matters of complaint regarding malpractice of mass copying, the Chairman of the Board of School Education is vested with power to ensure the functions of the educational institution and to ensure proper conduct of

the examinations for awarding certificates and diplomas to the students. The Chairman of the Board, by exercising such powers so delegated to him, passed an order and the validity of such order is questioned before the Courts of law on the ground that the Board has no power to delegate its power and any action taken by the authority in exercise of delegating the power so delegated is without jurisdiction. The Supreme Court has negatived such contention and upheld the decision so taken by the Chairman who acted as the delegate of the Board. In the present case on hand, the Syndicate has constituted the disciplinary authority by having one of its members as Chairman as such, no objection regarding the power of the Syndicate to constitute one such committee with delegation of its power can be entertained at all.

44.However, this Court is further inclined to go into the question that the disciplinary committee so constituted can be allowed to continue to exercise its power for the purpose for which it is constituted. It is very unfortunate that the issue so raised above may have to be answered in the negative for the discussion held below. It is true that the constitution of the committee at the inception does not suffer from any infirmity. However, the scope within which such power to be exercised and the manner in which the power is exercised is not likely to favour the continuance of the existing members in the committee. It is necessary to recollect the nature of the instructions given to the Commissioner of Technical Education by letter dated 14.5.2010 in Ref. no.172/AUCBE-R/R4/SYD/COE/2010. The AUCBE by the letter referred to above, intimated the Commissioner of Technical Education, about the constitution of the disciplinary committee and the name of others constituted as members of the committee. While doing so, the Commissioner of Technical Education was requested to arrange to conduct an enquiry based on the reports of the panels of experts, with the students who appeared for the first semester examination in the Archana Institute of Technology, the staff involved in the supervisory work for the examination including the Anna University representative and the Chief Superintendent, the Principal of the institution and the management of the institution and to send its report for the consideration of the Syndicate. In compliance of the same, the disciplinary committee has issued notice dated 21.5.2010 to all the members and the reading of the impugned show cause notice would reveal an indisputable fact

that the disciplinary committee issued the notice exclusively based on the report of the panel of experts without independently applying its mind to the issue in hand. As rightly argued by the learned counsel for the petitioners, the disciplinary committee has issued the notice with predetermined mind that there was mass copying by each individual and the opportunity sought to be given under the impugned notice based on the findings of the panel of experts as reported to Syndicate is in respect of the punishment proposed to be imposed on the students (i.e.) cancellation of first semester examination and debarring them in writing the further examination for two more years for the act of committing mass copying by them and the report of panel of experts was enclosed with every show cause notice. The students were not given any opportunity to deny the allegations contained in the contents of the report. They are only required to explain as to why the punishment proposed be imposed upon them. In that event, the impugned show cause notices were not issued with real and genuine intention to conduct any enquiry with the students and other persons said to be involved in this matter with free and unbiased mind. In my considered view, the biased attitude is apparent on the face of the records and any amount of subsequent clarifications or explanation sought to be offered by the learned Additional Advocate General in respect of such objectionable portion of the impugned notices as if the same is erroneous and the show cause notices can be read without reference to such portion will not cure the infirmity or irregularity attached to the impugned show cause notices.

45. The learned counsel for the petitioners cited various judgments in support of the contention that the enquiry sought to be conducted by the disciplinary committee is only a farce or illusory and as to how such show cause notice for post decisional opportunity is bad in law. The authorities cited are (i) (1986) 4 SCC 537 (Institute of Chartered Accountants of India v. L.K. Ratna and others) (ii) (1997) 6 SCC 674 (Rajesh kumar and another v. Institute of Engineers (India)) (iii) 2007 (1) CTC 844 SC (Siemens Ltd v. State of maharashtra and others) and (iv) (2006) 1 MLJ 22, Division Bench of the High Court, Madras (P.G. Narayanan, Member Rajya Sabha, Leader of the All India Anna Dravida Munnetra Kazhagam Parliamentary Party v. Comptroller and Auditor General of India and Mr. T. Teethan, Accountant General (Audit)).

46. In all these cases, similar show cause notice issued with pre-meditation was subjected to judicial review and the Supreme Court as well as the Division Bench of our High Court are declined to uphold the validity of the same. It is observed in 1986 (4) SCC 537 case that "there are cases where the order may cause serious injury as soon as it is made and the same is not capable of being entirely erased when the error is corrected on subsequent appeal and it is very difficult to contemplate complete restitution through appellate decision after the blow suffered by initial decision". In the same judgment, the Supreme Court has in para 24 referred to its earlier decision reported in AIR 1957 SC 425, *Manek Lal v. Prem Chand* wherein, the Supreme Court has observed that "it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases, the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done". The observations of our Apex Court referred to above are applicable to the facts of the present case with all force.

47. The apprehension raised in the mind of the petitioners that they may not get fair justice in the hands of the disciplinary committee is quite reasonable and justifiable and the same cannot be easily ignored. In that event, the duty cast upon this court is to adopt a balancing test in and under which both the sanctity of the examination and the interest of the students are to be protected. In my considered view, it can be achieved only by disallowing the continuance of the present members of the disciplinary committee and by directing the Syndicate to reconstitute the committee with fresh members to hold enquiry with students and the others as mentioned in the show cause notices impugned herein, however, independently of the report of the panel of experts, by giving effective and adequate opportunity to the students and the third respondent management and others who are represented in this case. It cannot be disputed that in order to achieve the desired result of maintaining sanctity of the educational field and the interest of the student community, the disciplinary committee is to be necessarily directed to allow all the reasonable modes adopted by the students to put forth their defence. It is but

necessary for the disciplinary committee to through out maintain an unbiased and impartial attitude and to act with all reasonableness, utmost care and caution keeping in mind, the interest of the institution and the society on one hand and at the same time, the future of the students and the institution to which they are attached to.

48.In the result, the impugned notices dated 21.5.2010 issued by the first respondent to all the 123 students are hereby quashed. The Syndicate is directed to reconstitute the disciplinary committee with fresh members excluding those who were already connected with this matter in one way or other, and the disciplinary committee is directed to hold the enquiry by issuing fresh individual notices and by giving effective and adequate opportunity including personal hearing to all the students and other persons concerned and to arrive at a conclusion on the basis of the materials placed before the committee independently, uninfluenced by the reports of the panel of experts and to submit the report to the Syndicate. On receipt of such enquiry report, Syndicate shall issue notice along with the copy of the enquiry report to all the 123 students and other persons concerned to give them opportunity to have their say on the enquiry report and the Syndicate shall, after considering the enquiry report along with the connected records and the explanation offered by the students and the others if any, pass final order. The whole exercise shall be completed within four months from the date of receipt of the copy of this order. It is needless to say that all the students and the other persons concerned shall extend their fullest co-operation for the effective and expedite disposal of the enquiry. In the mean time, the students shall be allowed to pursue their further study by duly permitting them to appear for the examination and by duly publishing their results and the same shall be subject to the final order of the Syndicate and the students shall not be permitted to claim equity.

49.With the above observations, the batch of writ petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

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