

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION NO. 15937 of 2015**

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BRAHMBHATT NIRAVKUMAR VIJAYBHAI &amp; 9....Petitioner(s)

Versus

GUJARAT TECHNOLOGICAL UNIVERSITY....Respondent(s)

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Appearance:

MR. D C DAVE, SENIOR ADVOCATE WITH MR PA JADEJA, ADVOCATE for  
the Petitioner(s) No. 1 - 10

MR DIPEN DESAI, ADVOCATE for the Respondent(s) No. 1

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**CORAM: HONOURABLE SMT. JUSTICE ABHILASHA  
KUMARI****Date : 15/10/2015****ORAL ORDER**

1 Heard Mr. D C Dave, learned Senior Advocate with  
Mr. P A Jadeja, learned advocate for the petitioners  
and Mr. Dipen Desai, learned advocate for the  
respondent University.

2 It is submitted by the learned Senior Counsel for  
the petitioners that as per the impugned orders dated  
24.09.2015, it is alleged that the petitioners have  
been found guilty of mass copying and their results of  
all the subjects of the current semester have been

cancelled. They have also been debarred from appearing in all the subjects of the next summer/winter examinations. It is submitted that, there was no complaint from the Supervisor of the examination hall where the petitioners sat for the examination, regarding copying or mass-copying. The issue has arisen from a report of the Examiner to the effect that the same students had attempted the same wrong answers in the same pattern. That in the impugned orders, it is stated thus:

*"the person who caught you during exam/assessment and comment of reviewer i.e. **You have been reported to involved in mass copying as similar pattern of answers (in particular pattern of mistake/ wrong answer is observed in Que. No.1...."***

3 Learned Senior Counsel has submitted that insofar as five petitioners are concerned, this is factually incorrect as the said petitioners have given different answers to Question No.1, including different wrong answers. Some of them have given right answers, as well. It is contended that along with the affidavit-in-reply, the respondent University has placed on record, the copies of the answer-sheet of only five petitioners out of ten. No material on

record has been placed on record to show how the other five petitioners have attempted the answers; therefore, all ten petitioners cannot be tarred with the same brush, as they have attempted answers differently.

4 Learned Senior Counsel has strongly contended that the statement in the impugned order that the petitioners were caught during the exam/assessment is factually incorrect as it is the case of the respondent University, itself, that no complaint was lodged against the petitioners during the examination. The report of the Expert on the subject mentions that apart from the answer-sheets, the CCTV footage, Block Seat arrangement, Junior Supervisor details and college details also should be seen. Insofar, as the CCTV footage is concerned, the respondent has stated in its affidavit-in-reply that at 12:03 p.m, 12:07 p.m, and 12:33/34 p.m, a person came into the examination hall, whose back alone was visible. From this, conjectures are being drawn that the said person may have dictated the answers to the petitioners. In the note placed before the Unfair Means Committee, it

is stated that a person came to relieve the Junior Supervisor. That, it is not the case of the University that the Junior Supervisor, who was a reliever, has dictated the answers to the students.

5 It is next submitted that the petitioners were not seated side-by-side but were seated in a scattered manner though, in the same room. The finding in the impugned order that the petitioners were caught red-handed and have given the same wrong answers is factually incorrect, as same petitioners have answered all correct answers and the ones who have given wrong answers have given different wrong answers, therefore, no pattern is visible, as alleged.

6 Learned Senior Counsel has submitted that the practical examination for Design Engineering of the petitioners is to commence from 16.10.2015, as per the Circular dated 06.10.2015, followed by the Theory examinations. The petitioners would not claim any equity, if they are permitted to sit in the examinations and are ready to file undertakings to this effect on, or before, 20.10.2015.

7 Reliance has been placed upon a judgment of the Supreme Court in the case of **Deoraj Vs. State of Maharashtra And Others** reported in (2004) 4 SCC 697, specially paragraph 12 thereof.

8 On the other hand Mr. Dipen Desai, learned counsel for the respondent, has submitted that from the report of the Examiner, it is evident that he found a pattern in the manner in which the petitioners wrote the same wrong answers. The report of the Subject-Expert also states that eleven students tried to attempt the same right and wrong answers in almost the same pattern. There is, therefore, a probability of mass-cheating having taken place. It is submitted that in the CCTV footage, a person entered the examination hall, who may have dictated the answers to the students, but his face is not visible and only his back is seen. Neither is there any sound in the CCTV footage, therefore, it cannot be ascertained that any answers were dictated.

9 In support of the submission that the Court would be slow to re-examine the evidence in such matters in

exercise of its writ jurisdiction, learned counsel for the respondent has placed reliance upon the following judgments:

(1) L.P.A No. 1489 of 2012 and connected matters judgment dated 28.12.2012 passed in the case of ***Thummar Vishal G & Ors Vs. State of Gujarat Thro Secretary & Ors.***

(2) ***Prem Prakash Kaluniya Vs. The Punjab University And Others*** reported in (1973) 3 SCC 424.

(3) ***Union Public Service Commission Vs. Jagannath Mishra*** reported in (2003) 9 SCC 237 (paragraphs 3 and 4)

(4) ***Director (STUDIES). DR. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh and Others Vs. Vaibhav Singh Chauhan*** reported in (2009) 1 SCC 59 (paragraph 16)

(5) ***Controller of Examinations Vs. G S Sunder and Another*** reported in ***1992 (2) G.L. H pg 140*** and

(6) ***Hanuman Prasad And Others Vs. Union of India And Another*** reported in ***(1996) 10 SCC 742.***

10 This Court has heard learned counsel for the respective parties on the grant of interim relief. This Court has also perused the entire material available on record.

11 Copies of the answer-sheets of only five petitioners out of ten, have been placed on record along with the affidavit-in-reply filed by the respondent University. It is not known in what manner the other five petitioners have attempted the objective-type examination. From the answer-sheets of the five petitioners placed on record, it prima-facie transpires that insofar as Question No.1(b) is concerned, which contains seven sub-questions, five petitioners have given correct answers to the first sub question. Insofar as the second sub-question is

concerned, the wrong answers have been given differently by five petitioners. In the third sub-question, all five petitioners have given correct answers. In the fourth sub-question, five petitioners have given different wrong answers. In the fifth sub-question, all five petitioners have answered correctly. In the sixth sub-question, five petitioners have given different wrong answers. In the seventh sub-question, one out of five petitioners has given the correct answer and the other four have given different wrong answers.

12 In the affidavit-in-reply filed by the respondent-University, it is stated that one person entered the examination hall which is seen from the CCTV footage. However, only the back of that person is visible. A conjecture and surmise is drawn that the said person may have dictated answers to the students. As there is no sound in the CCTV footage, this remains only in the realm of conjecture. It is stated that from the CCTV footage, it cannot be conclusively said that the person dictated answers. Another version appears in the Note placed before the Unfair Means

Committee wherein it is stated that a reliever entered the examination hall to relieve the Junior Supervisor. Whether the reliever is the same mysterious person caught on CCTV is not clear from the record and nothing is stated in the reply regarding this. Whether any enquiry was made from the reliever is also an unanswered question.

13 In the impugned orders dated 24.09.2015, it is stated that the petitioners were caught cheating, which does not appear to be factually correct, even from the affidavit-in-reply filed by the University. It transpires from the said orders that an inference of mass copying is drawn on the basis of a similar pattern of answers, more particularly the wrong answers. From the answer-sheets of five petitioners placed on record, it does not transpire that all five petitioners have given the same wrong answers.

14 Thus, the court finds certain contradictions and inconsistencies in the matter at this stage.

15 Be that as it may, at this stage, this Court is

not forming any final conclusion. However, the material on record is such that the Court would find itself in a situation as described by the Supreme Court in the case of **Deoraj Vs. State of Maharashtra And Others (supra)**. The relevant extract of which is reproduced herein below:

*"12. Situation emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the mainmatter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case- of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury*

*complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent."*

16 The Court is informed that the practical examinations of the petitioners are commencing from tomorrow, i.e. 16.10.2015. If interim relief is withheld, it may amount to the dismissal of the main petition itself. Considering the nature of the petition and the material on record, the Court finds it appropriate to grant the interim relief, as prayed for in order to prevent injustice from taking place. Hence, the following order:

Issue Rule returnable on 23.11.2015. Mr. Dipen Desai, learned advocate for the respondent University, waives service of notice of Rule for the respondent University. By way of interim relief, the petitioners are permitted to sit for the practical examinations that are to commence from 16.10.2015 and in the Theory examinations that will take place thereafter.

17 The petitioners shall clearly understand that

they cannot claim any equity for being permitted to participate in the examinations. Each of the petitioners shall file an Undertaking to this effect, on, or before, 20.10.2015. The results of the examinations shall not be declared until the final disposal of the petition.

18 The parties may complete the pleadings in the meanwhile.

**(SMT. ABHILASHA KUMARI, J.)**

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