

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Writ Petition No. 13756 of 2015
Date of Decision: 18.09.2015

Dr. Vikas Aggarwal and Others

... Petitioner(s)

Versus

Dental Council of India and Others

... Respondent(s)

AND

2. Civil Writ Petition No. 19426 of 2015

Dr. Ravpreet Singh

... Petitioner(s)

Versus

Dental Council of India and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice G.S.Sandhawalia.

Present: Mr. Harkesh Manuja, Advocate
for the petitioners (In CWP-13756-2015).

Mr. Rohit Mittal, Advocate
for the petitioner (In CWP-19426-2015).

Mr. Yagyadeep, Advocate
for respondent No.1.

Mr. K.S.Sandhu, Advocate
for respondents No.2 to 4.

G.S.Sandhawalia, J. (Oral)

The present judgment shall dispose of Civil Writ Petition No.
13756 of 2015 and Civil Writ Petition No. 19426 of 2015. For decision of

the petitions, the facts are being taken from Civil Writ Petition No. 13756 of 2015.

The petitioners pray for quashing of their result declared by the respondent No.2-University for the course of Master of Dental Surgery on account of violation of the prescribed procedure whereby the answer books were to be evaluated by four examiners, two internal and two external and the average marks had to be computed. The petitioners claim is that after passing their degree course of Bachelor of Dental Surgery, they had been granted admission for the post graduation degree of Masters of Dental Surgery on the strength of the All India Entrance Examination. The duration of the said course is three years and only one examination is to be conducted at the end of three years which consists of four papers. As per the Dental Council of India notification, Revised MDS Course Regulations were notified on 21.11.2007 wherein it is mandatory to have four examiners in each subject, out of them two are external and two are internal. The average marks have to be computed for evaluation of the answer books. The relevant clauses read as under:-

"Examiners:

There shall be at least four examiners in each subject. Out of them two shall be external examiners. The qualification and teaching experience for appointment of an examiner shall be as laid down by the Dental Council of India and the respective university."

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Valuation of Answer Books:

All the answer books will be valued by four examiners, two internal and two external and the average marks will be computed."

It is the case of the petitioners that the prescribed procedure was not followed by the respondent No.2-University and specific averment was made in that context in para No.9 of the writ petition. In the written statement filed by the University, the said fact is not denied and it has been averred that fresh answer books were got evaluated by the University. This Court noticed vide order dated 21.8.2015 that if such a prayer is to be allowed, it would affect all the students who had given the said examination and a better affidavit be filed. In pursuance of the said order, affidavit of Registrar of the University has been filed and an effort has been made to justify the violation on the ground that it is not feasible for the University to get the answer books re-evaluated from the same set of examiners, two internals and two externals who actually conducted the practical examination. A suggestion has been made that University can get the answer books of the students who failed in theory examination only, re-evaluated from some other eligible examiners of a concerned specialty and thus, it has been suggested that only seven students, who have failed in theory examination will be entitled for re-evaluation.

The Dental Council of India has filed its written statement

wherein it has been specifically mentioned that the declaration of the result is violative of the statutory requirement as prescribed under the Revised MDS Course Regulations, 2007. The manner of doing a thing in a particular manner excludes all other methods of doing the same thing. In *State of U.P. Vs. Singhara Singh*, AIR 1964 SC 358, the Hon'ble Supreme Court held as under:

"7. *In Nazir Ahmed vs. King Emperor AIR 1936 PC 253, the Judicial Committee observed that the principle applied in Taylor vs. Taylor (1876) 1 Ch.D 426 to a court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a record under Section 164 and, therefore, held that the Magistrate could not give oral evidence of the confession made to him which he had purported to record under Section 164 of the Code. It was said that otherwise all the precautions and safeguards laid down in Sections 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that "it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves".*

Later a Constitution Bench in a judgment reported as **A.R.**

Antulay Vs. Ramdas Srinivas Nayak, (1984) 2 SCC 500, held as

follows:

"22. *Once the contention on behalf of the appellant that investigation under Section 5-A is a condition precedent to the initiation of proceedings before a Special Judge and therefore cognizance of an offence cannot be taken except upon a police report, does not commend to us and has no foundation in law, it is unnecessary to refer to the long line of decisions commencing from Taylor v. Taylor (1876) 1 Ch.D 426; Nazir Ahmad v. King-Emperor AIR 1936 PC 253 and ending with Chettiam Veettil Ammad v. Taluk Land Board Air 1979 SC 1573, laying down hitherto uncontroverted legal principle that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.*"

In such circumstances, there is no option left with this Court but to allow these writ petitions. Accordingly, both the petitions are allowed. The result for the course of Master of Dental Surgery is accordingly quashed. The University will notify the concerned students and thereafter proceed to re-evaluate the result as per the statutory requirements of the Dental Council of India. The needful be done within six weeks from the date of receipt of a certified copy of this order by following the due procedure. For the lapse on account of the University, for not following the prescribed procedure a sum of ₹ 25,000/- is

**Civil Writ Petition No. 13756 of 2015
And Connected Case**

6

imposed as costs for the harassment caused to the petitioners and to the other students. The said amount be deposited with the Mediation & Conciliation Centre of this Court within a period of four weeks.

**(G.S.Sandhawalia)
Judge**

September 18, 2015

"DK"