

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19585 of 2016

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Sunil Kumar Son of Bhupendra Prasad Yadav Resident of Village-Sikiyahi, Post-Barahkurwa, Dist-Supaul

.... Petitioner/s

Versus

1. The state of Bihar through its Principal Secretary, Education Department, Govt. of Bihar, Patna
2. The Aryabhhat Knowledge University Patna through its Vice Chancellor
3. The Examination Controller, Aryabhhat Knowledge University Patna
4. The Principal Nalanda Medical College and Hospital, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Singh
Mr. Bijay Shankar Choubey
For the Respondent No.2 & 3 : Mr. Arif Raza, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date: 24-03-2017

The petitioner is pursuing MBBS course in Nalanda Medical College and Hospital, Patna. He appeared in 1st professional MBBS examination in July, 2015, but failed in all subjects. He, thereafter, second time appeared in the said 1st professional MBBS examination held in the month of January- February, 2016. He was shown to have passed in the said examination and was, accordingly, granted promotion to 2nd MBBS course. His mark in Biochemistry (theory) was shown as 32 on the *Website* of Aryabhhat Knowledge University, which had held the examination.

2. When he was pursuing 2nd MBBS professional course, he was informed that he had failed in 1st MBBS professional



examination in his second attempt also. It appears that he again appeared in 1st MBBS professional examination, which commenced in July/ August, 2016. This is not in dispute that the Aryabhat University had communicated the fact to the College and the petitioner by letter dated 21.7.2016, that the petitioner had failed in his second attempt also in 1st professional M.B.B.S. examination.

3. The grievance of the petitioner is that he was wrongly debarred from appearing in 2nd professional M.B.B.S. examination by arbitrarily holding him to have failed in his second attempt of 1st professional M.B.B.S. examination, in which he was earlier declared to have passed.

4. Learned counsel appearing on behalf of the petitioner has submitted that without assigning any reason and without issuance of show cause notice, the petitioner was declared as failed. According to him, action of the respondents is completely arbitrary.

5. A counter-affidavit has been filed on behalf of the Aryabhhat Knowledge University, Patna in which it has been stated that at the time of examination, the candidates are required to write their 'Answer Book serial number' with signature in attendance Register. On the basis of entry which the petitioner had made on Answer Book serial number in the attendance Register, the petitioner was declared to have passed. Subsequently, it was detected that the



Answer Book serial number as mentioned by the petitioner was Answer Book serial number of a B.Com. candidate. On comparing manually the Answer Book of the two candidates, the result was corrected and the petitioner was, accordingly, declared 'fail' in Biochemistry. Result was subsequently displayed on the University Website.

6. In the counter-affidavit it has further been submitted that when the petitioner was informed about the development, he filed a representation on 2.5.2016 and accepted his mistake, which has been brought on record by way of Annexure-H to the counter-affidavit. It has further been stated that when he appeared for the third time in same 1st MBBS examination held in July, 2016, he was caught using unfair means, which has led to registration of an F.I.R. against him.

7. The University has also brought on record the copy of the Answer sheet of the petitioner to show that the petitioner had scored 20 marks in the concerned paper, in his second attempt to clear Ist MBBS professional course.

8. The statements to this effect made in the counter-affidavit have not been controverted by the petitioner by way of rejoinder. The petitioner has not disputed that he himself had filed a representation before the Examination Controller of the University in which he accepted his mistake and requested to publish his result on



basis of what he had actually scored. This fact ought to have been mentioned in the writ petition by the petitioner himself in all fairness which is missing in the pleadings. He, rather, has deliberately attempted to conceal this material fact from the Court. This Court deprecates his conduct. A writ proceeding is decided on the basis of affidavits of the parties. It is obligatory on part of the parties, in such situation, to come with clean hands, in their pleadings in a proceeding under Article 226 of the Constitution of India. Lack of fairness disentitles a party of consideration of his claim in equitable writ jurisdiction.

9. Learned counsel appearing on behalf of the petitioner has placed reliance on a Supreme Court's decision in the case of **Shri Krishnan vs. The Kurukshetra University** (*A.I.R. 1976 SC 376*) in support of the contention that any admission made in ignorance of legal rights or under duress cannot bind the maker of the admission.

10. Such decision has no application in the facts and circumstances of the present case. The copy of the Answer sheet of the petitioner of the concerned paper has been brought on record by way of annexure. The correctness of the said document is not in dispute. It is evident from the said document that the petitioner had failed in the examination. It is also evident that the petitioner had mentioned incorrect answer book serial number in the attendance



register.

11. In view of admitted facts, as noticed above, I do not feel persuaded to interfere with the action of the respondents. I do not find any merit in this application. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03-04-2017
Transmission Date	

