

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9456 of 2016

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Ashish Kumar Son of Sri Girija Prasad Biswas resident of Rajhatta Binodpur, P.O.
and P.S.- Katihar, District- Katihar

.... Petitioner/s

Versus

1. Arayabhatta Knowledge University, Patna through its Registrar
2. The Vice Chancellor, Arayabhatta Knowledge University, Chanakya
3. The Registrar, Arayabhatta Knowledge University, Chanakya National Law University Campus, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj Narain Yadav

For the Respondent/s : Mr. Arif Raza

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 04-05-2017

The short point involved in the present case is whether right, which has crystallized to an individual, can be taken away without observance of the principles of natural justice.

2. In the present case the facts which are not in dispute are that after clearing post-graduate medical entrance test, the petitioner was admitted to P.G. degree course (Obstetrics and Gynecology) for the session 2012-15 in Darbhanga Medical College and Hospital, Darbhanga (DMCH) and he passed the final examination held in the month of April, 2015 by Arayabhata Knowledge University, Patna (hereinafter referred to as 'the University'). The marks sheet and provisional certificate were issued to him. He was also granted P.G. degree in Obstetrics and Gynecology by the University.



3. Subsequent to publication of the petitioner's result, the DMCH came out with a notice to the effect that there had been some irregularities in the result of the MD/MS examination of D.M.C.H in respect of three students, including this petitioner.

4. In the light of certain decision taken by the Vice-Chancellor of the University, thereafter, the results of those students were stayed with immediate effect. Subsequently, the University came out with a letter dated 04.03.2016 issued by the Registrar addressed to Medical Council of India stating that result of three P.G. students including the petitioner have been cancelled by the Executive Council of the University. The said letter mentioned that the said students were found guilty by the University of using illegal practice in the examination process.

5. The said letter dated 04.03.2016 is being assailed in the present writ application. It is the specific plea of the petitioner that before the decision to cancel his result was taken, no notice was given to him. Referring to the impugned communication, the learned counsel appearing on behalf of the petitioner has submitted that it is a non-speaking order inasmuch as it does not disclose the kind of illegal practice adopted by the concerned persons leading to cancellation of their results.

6. A counter affidavit has been filed on behalf of



the University. It has been stated in the counter affidavit that University found tampering of marks in OMR response sheets in cases of the petitioner and two other students of P.G. examination (batch 2012-15) of DMCH. According to the counter affidavit, a three member committee was constituted to probe into the irregularities in the aforesaid result with respect to three students including the petitioner. The committee came to a finding that Principal, DMCH, had personally verified from Heads of the Department of PSM and Obstetrics and Gynecology who had declared the petitioner and two other candidates "failed" in clinical and practical examinations. The committee examined records of OMR response sheets and on having examined the records, came to a conclusion that tampering was done during transit of the consignment containing OMR response sheets.

7. Mr. Anand Kumar Ojha, learned counsel appearing on behalf of the University has submitted that the facts are so apparent that no notice was required to be issued to the petitioner before taking impugned action. He has submitted that examination of the OMR response sheets showed that tampering was done in such a planned manner that the petitioner and other two candidates could be declared "pass". He has submitted that in such circumstance, compliance of principle of natural justice by issuing show cause notice to the petitioner before cancelling his result



would have been an empty formality.

8. He has submitted that the action of University was of mere correction of error in the OMR response sheet of the petitioner for which no show cause notice was required to be issued for him.

9. The plea which has been taken on behalf of the University on the point of compliance of principle of natural justice cannot be accepted in the facts and circumstances of the present case. It is the case of the University that tampering was found in the award sheet of the petitioner which was done when the award sheet was being carried out from the College to University. These are the facts which ought to have been made known to the petitioner, seeking his explanation/comments thereon. Only after considering his response/explanation of the petitioner thereon, if submitted any action of this nature could have been taken. That having not been done, I am of the view that action of the University, in cancelling the result of the petitioner cannot be sustained being in breach of principle of natural justice.

10. Further the learned counsel for the petitioner has drawn my attention to Section 26 of the Statute issued by University under section 28 of Aryabhata Knowledge University Act, 2008 which reads as follows:-

“ Withdrawal of degrees, etc.-

The executive council may, by a resolution



passed by a majority of not less than two-thirds of the members present and voting, withdraw a degree or academic distinction conferred on or any certificate of diploma granted to, any person by the University for good and sufficient cause.

Provided that no such resolution shall be passed until a notice in writing has been given to that person calling upon him to show cause within such time as may be specified in the notice as to why such a resolution should not be passed and until his objection, if any, and any evidence he may produce in his support, have been considered by the Executive council."

(Emphasis is added)

11. It is specific plea on behalf of the petitioner that before cancelling petitioner's result, no decision has been taken by the Executive Council by a resolution passed by a majority of executive council as contemplated under Section 26 of the Statute. This plea could not be controverted by learned counsel appearing on behalf of the University.

12. In view of the above, the impugned letter dated 4.3.2016 cancelling the result of the petitioner is set aside.

13. The University is directed to take a decision



afresh, in view of facts which have emerged and dealt with in the counter affidavit after giving the petitioner a due opportunity of being heard. The University will be required to furnish to the petitioner the documents which would be forming basis for the University for proposed cancellation of result before taking any such decision. It goes without saying that the University shall comply with requirements of Section 26 of Statute as quoted above in letter and spirit. Entire exercise must be complied with within four months, considering the gravity of the matter. Learned counsel for the petitioner, in response to court’s suggestion has undertaken that during these four months the petitioner shall not utilize her degree.

14. Accordingly, this application is allowed. The decision of Executive Committee, dated 05.11.2015, taken in its 24th meeting, vide Agenda No. 05/24 also stands set aside for the same reason as no proper notice was given to the petitioner before withdrawal of the degree.

Ravi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.06.2017
Transmission Date	

(Chakradhari Sharan Singh, J)

