

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17950 of 2017

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Abhishek Kumar Verma, Son of Ram Naresh Verma, Resident of Village &
P.O.- Durg Matihania, P.S.- Bishambharpur, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Govt. of Bihar, Patna.
2. The Vice Chancellor, Arya Bhatta Knowledge University, Patna, CNLU Campus, Mithapur, Patna.
3. The Registrar, Arya Bhatta Knowledge University, Patna, CNLU Campus, Mithapur, Patna.
4. The Controller of Examination, Arya Bhatta Knowledge University, Patna, CNLU Campus, Mithapur, Patna.
5. The Principal, S K Medical College, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar Mr. Raghav Prasad
For the State	:	Mr. Ramadhar Singh -GP25 Mr. Anirudh Kumar Singh, AC to GP 25
For respondents 2-4	:	Mr. Arif Raza

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

- 3 22-12-2017 The petitioner is a student of MBBS 1st year of session 2016-17 of Sri Krishna Medical College, Muzaffarpur. He had appeared at the Anatomy-I theory paper of the 1st Professional MBBS Theory Examination, 2017, on 08.08.2017. Subsequent to the said paper, he had appeared for examination in respect of other papers also. He received a show cause notice on 12.08.2017, issued by the Controller of Examination, Aryabhatt Knowledge University, Patna, alleging that the he was found using unfair means with the help of a chit attached with a notice,



in the examination room. The show cause notice has been brought on record by way of Annexure-2 which refers to the examination of said Anatomy-I paper, held on 08.08.2017. The petitioner responded to the said notice by filing his reply on 30.08.2017, stating that the chit of paper, which was found by the Invigilator was lying down the right side of his desk and it was not found in possession of the petitioner. The petitioner claimed ignorance about the chit of paper, which was found by the Invigilator, lying on the floor. It is evident that the action was initiated on a report of the Centre Superintendent.

It appears from a subsequent document, dated 25.09.2017, that the show cause notice and petitioner's explanation were submitted before the Unfairmeans Committee of the University. The Unfairmeans Committee, after perusing and examining the case of the petitioner, as per report submitted by the Centre Superintendent, L. S. College, Muzaffarpur, and the reply submitted by the petitioner, recommended that the conduct of the petitioner of utilization of peace of paper/notes fell in Category-3 and, therefore, his current examination deserved to be cancelled. Based on the recommendation of the Committee, a decision has been taken to cancel all papers of the current examination.



The petitioner is aggrieved by a communication, dated 25.09.2017, issued by the Controller of Examination, whereby the petitioner has been informed about the cancellation of the current examination, i.e. the entire 1st Professional MBBS Theory Examination, 2017, for which he had appeared in August, 2017.

A counter affidavit has been filed on behalf of the University. In order to make out a case that the petitioner had utilized the chit of paper, recovered by the Invigilator, the petitioner's answer sheet of Anatomy-I paper and the chit of paper recovered have been brought on record by way of annexures. It has been argued on that basis that since one answer of the petitioner in the answer sheet tallies with the contents of the chit recovered, the Committee rightly arrived at the conclusion that the petitioner had utilized the said chit of paper in the examination hall.

What is evident from the pleadings on record that there is nothing to suggest that the petitioner was found in possession of the said chit of paper.

The petitioner had taken specific plea in his show cause reply that the said chit of paper was lying on the floor when it was recovered by the Invigilator. The said stand of the petitioner



has not been overruled by anybody. There is nothing to show that the Invigilator was examined by the Committee. There is no specific finding recorded by the Unfairmeans Committee to the effect that the petitioner had utilized the chit of paper. It appears that the Committee simply recommended for cancellation of examination since it was mentioned in the show cause notice that the petitioner was found using unfair means with the help of the chit attached with the show cause notice. There is no discussion at all by the Unfairmeans Committee on record, which can be said to be discussion on the findings.

Since learned Counsel appearing on behalf of the University was not able to assist the Court to substantiate the stand taken on behalf of the University that the petitioner had, in fact, used unfair means with the help of the said chit of paper, the subject, in question, being technical in nature, he was allowed to call an expert in the Court room to clear the doubt. Accordingly, at the time of hearing, the Head of the Anatomy Department, Patna Medical College and Hospital, Patna, had appeared before this Court on 20.12.2017. He tried to convince this Court that following answer was copied from the chit of paper, which was recovered by the Invigilator:-

“Trochlear nerve emerges in
superior medullary velum below



frenulum veli just inferior colliculus
emerge on the dorsal aspect of
brainstem.”

It was suggested by him that the petitioner had copied from
the following part of the chit of paper.

“The Trochlear nerve emerges
from the superior medullary velum
near the frenulum veli just below the
inferior colliculus. It is the only
cranial nerve which emerges on the
dorsal aspect of the brainstem.”

Merely on the basis of what has been answered tallies to
some extent with the text of a book, cannot lead to a definite
finding that the examinee had used unfair means.

From the pleadings on record, it appears that no enquiry
was done in order to come to the truth as to from where the said
chit of paper was recovered. The Invigilator would have been
the best person to establish this fact, whose statement was
apparently not taken. There is no definite material to suggest
that the petitioner was in possession of the said chit of paper or
was using the said chit of paper. Even his answer, as quoted
above, does not exactly tally with the text in the chit of paper.

In that background, the impugned action deserves
interference by this Court. Accordingly, the impugned order,



dated 25.09.2017 (Annexure-p5 to the writ application), is
hereby quashed.

Consequence of quashing of the said order shall follow.

This writ application stands allowed.

(Chakradhari Sharan Singh, J)

Prabhakar Anand/-

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