

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.91 of 2018
IN
Civil Writ Jurisdiction Case No. 17950 of 2017**

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1. The Vice Chancellor, Aryabhatta Knowledge University, Patna, CNLU Campus, Mithapur, Patna.
 2. The Registrar, Aryabhatta Knowledge University, Patna, CNLU Campus, Mithapur, Patna.
 3. The Controller of Examination, Aryabhatta Knowledge University, Patna, CNLU Campus, Mithapur, Patna.

.... Appellant/s

Versus

1. Abhishek Kumar Verma, Son of Ram Naresh Verma, Resident of Village & P.O.- Durg Matihania, P.S.- Bishanbharpur, District- Gopalganj.
2. The State of Bihar through the Principal Secretary, Health Department, Govt. of Bihar, Patna.
3. The Principal, S K Medical College, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arif Raza

For the Respondent/s : Mr. S.D.YADAV -AAG9

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 12-03-2018

Challenge in this Letters Patent Appeal is to an order dated 22.12.2017 passed by the learned Writ Court in CWJC No.17950 of 2017 by which the Writ Court has been pleased to allow the writ application by quashing the impugned order dated 25.09.2017 (Annexure-p5 to the writ application).

2. The original writ-petitioner had moved the Writ Court for quashing of a decision of the Unfairmeans Committee held



on 25.09.2017 as approved by the Vice-Chancellor of Aryabhatt Knowledge University, Patna. The Unfairmeans Committee held that the petitioner who was taking his 1st Professional MBBS Theory Examination, 2017 was guilty of category-3 i.e. “Utilization of piece of paper/notes/books/chits etc. which is connected with the subject matter of the examination.” In view of this finding, the Committee decided for cancellation of current examination of the petitioner and the same having been approved by the Vice-Chancellor of the University was communicated to the petitioner vide Annexure-5 to the writ application.

3. The petitioner submitted that on 08.08.2017 he had appeared and had done well in the theory paper of Anatomy-I, thereafter as per examination schedule he was allowed to appear in all the papers on scheduled date and time. It is further stated that all of sudden vide letter no.3464 dated 12.08.2017 he received a show cause alleging that he had been using unfair means with the help of attached chit in the examination room. The petitioner submitted that show cause notice was neither accompanied by any evidence of allegation nor the report of Centre Superintendent as required under Rule 5 of the Rules of Unfairmeans. According to him, as advised by the principal of the college, he filed a short reply vide Annexure-4 to the writ application. In his reply, he submitted that the chits were found



down the right side of the desk and he was unknown about that chit and had not used the chit which were lying on the floor. He, however, further pleaded to forgive him for the things which had happened.

4. A counter affidavit was filed on behalf of the respondent nos.2 to 4 and the Assistant Controller of Examination, Aryabhata Knowledge University, Patna in which it was alleged that the petitioner was caught by the invigilator while using unfair means with the help of chits in the examination room which was evident from the report of the observer and Centre Superintendent dated 08.08.2017 as contained in Annexure-B, C and D respectively. It is further stated that pursuant to the show cause and on receipt of the reply a final decision was taken by Unfairmeans Committee. In the meantime, the petitioner was provisionally allowed to appear in the subsequent examination vide Annexure-J. A perusal of the Annexure-J to the counter affidavit would however show that it is a letter dated 25.09.2017 communicating the final decision to the petitioner.

5. The learned Writ Court having heard the parties and on perusal of the records found that there was nothing apparent from the pleadings on record that the petitioner was found in possession of the said chit of paper. There was a specific case of the petitioner that 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. The invigilator was not examined by the Committee and the learned Writ Court also found 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 chit attached. The learned Writ Court also rejected the contention of the appellants that the answer was copied from the chit of paper which was recovered by the invigilator therefore the petitioner had copied from the same is proved.

6. The learned Writ Court found that in this case no enquiry was done in order to come to the truth as to from where the said chit of paper was recovered. The invigilator who would have been the best person to establish this fact did not give any statement and there was 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.

7. Assailing the order of the learned Writ Court, learned counsel representing the appellant-University has submitted before us that even in absence of statement of the invigilator, the guilt of the petitioner has to be taken as proved from the contents of the reply of petitioner. Learned counsel however could not controvert the findings of the learned Writ Court that there is no definite material on the record to show that the petitioner was in possession of the chit based on which the recommendation was made to the Committee.



Learned counsel is also unable to controvert the findings that in this case the invigilator who had recovered the chit did not give any such statement and at least the Unfairmeans Committee has no material in form of statement of invigilator to support the findings recorded by the committee.

8. Learned counsel has relied upon a decision of the Hon'ble Apex Court in the case of **Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh and Others Versus Vaibhav Singh Chauhan** reported in (2009) 1 SCC 59 wherein, in the facts of the said case the Hon'ble Supreme Court had held that the direction of the learned Single Judge in his judgment dated 30.10.2006 for declaring the result of the writ-petitioner in the subject "Front Office" in which he appeared in April 2006 was illegal because as per Rule 9.1 once a candidate has been found using unfair means even in one subject/paper, he will be deemed to have failed in all the subjects/papers and he has to rewrite the entire examination. The Hon'ble Supreme Court did not agree with the Hon'ble Division Bench in the said case as the Hon'ble Division Bench had repeated the same view which was taken by the learned Single Judge.

9. A perusal of the facts of the said case would show that there the writ-petitioner Vaibhav Singh Chauhan while writing



his answer script in the subject of “Front Office Management” was found in his possession of a slip which contained material relevant to the examination. The invigilation staff took the slip into their possession and a fresh answer sheet was given to the respondent. A malpractice case based on the seizure of the slip was initiated against the writ petitioner by the Examination Committee, in his statement before the enquiry the writ-petitioner had admitted that the slip which was seized from his possession was in his own handwriting. Thus, in the said case, the petitioner had confessed the charge against him. We are afraid the facts of the case decided by the Hon’ble Supreme Court were totally different from the facts of the present case.

10. We remind ourselves of the judgment of the Hon’ble Supreme Court in the case of **Bharat Petroleum Corporation Ltd. and Anr. Vs. N.R. Vairamani & Others** reported in (2004) 8 SCC 579, in which the Hon’ble Apex Court has put a word of caution stating that the judgments of the Court should not be cited like euclid’s theorems as the slightest of change in the facts of the case would make a sea difference in the judgment of the court.

11. In the present case, the facts reveal that the petitioner was not found in possession of the chit, there is no definite material to show that the chit was recovered from his possession and further unlike the case before the Supreme Court on which the



appellants have placed reliance, in the present case, there is no confession by the writ-petitioner and on the contrary the writ petitioner has taken a specific stand in his reply to the show cause, what is stated in the last line of his reply cannot be said to be an acceptance of guilt. He is categorically saying in his reply that the chit was not found from his possession and in absence of any material sufficient to punish the petitioner with such an extreme consequence, the learned Writ Court has rightly allowed the writ application in the facts of the present case.

12. We do not find any error in the judgment of the learned Writ Court and hence, the Letters Patent Appeal, being devoid of merit, is dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	NAFR
CAV DATE	N/A
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