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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
Reserved on -23.04.2018.  
Date of Decision – 11.05.2018.

+ W.P.(C) 8468/2017 & CM Nos.34863/2017, 42344/2017

MS. POOJA KHATRI & ORS. .... Petitioner  
Through: Mr.U.K.Shandilya, Adv.

versus

DELHI UNIVERSITY & ORS. .... Respondents  
Through: Mr.Mohinder J.S.Rupal with  
Mr.Prang Newmai &  
Ms.Slomita Rai, Advs. for DU.

**CORAM:**  
**HON'BLE MS. JUSTICE REKHA PALLI**

**JUDGMENT**

**REKHA PALLI, J**

1. The eight Petitioners, who are ex-students of the B.Sc. Physical Education, Health Education and Sports degree course (hereinafter referred to as the "Degree Course") of the Respondent No. 2/Indira Gandhi Institute of Physical Education and Sports (hereinafter referred to as the "Institute"), which is affiliated with the Respondent No.1/University, have preferred the present petition under Articles 226 and 227 of the Constitution of India seeking *inter alia* quashing of the result dated 28.07.2017 (hereinafter referred to as the "Impugned Result") insofar as it relates to them, whereby they have been declared as 'Failed' in the Practical Examination of the subject '*Track & Field*' bearing paper code BPE-603 (hereinafter referred to as "Concerned Subject").

2. The brief facts as emerge from the record are that the Petitioners had joined the aforesaid Degree Course in the Respondent No. 2/Institute in July, 2014. Upon successfully clearing the first and second year examinations, the Petitioners were promoted to the third year in July, 2016. The final examination of the sixth semester, comprising of both theory as well as practical examinations, was to be held as per the schedule announced on 11.04.2017, according to which the theory exams were to be held between 27.04.2017 to 04.05.2017 and the practical examination was to be held on 02.05.2017.

3. Since, as per the norms, the practical examination was to be conducted by two examiners, the Respondent No.3 was appointed as the Internal Examiner and the Respondent No. 4 was appointed as the External Examiner for the practical examination scheduled for 02.05.2017. As per the averments in the writ petition, it was only the Respondent No. 3/Internal Examiner, who conducted the practical examination on 02.05.2017, whereas the Respondent No. 4/External Examiner remained absent throughout the duration of the said examination, though his signatures appear on the mark-sheets of the Petitioners. On this premise, it was claimed that the practical examination was conducted in contravention of the norms stipulating that the practical examination is to be conducted in the presence of both the Internal Examiner and the External Examiner.

4. The Petitioners had, while referring to the syllabus prescribed for the practical examination of the Concerned Subject, contended in the petition that both the field events, which the Petitioners were asked to perform, as also the questions asked from them in the viva-voce by

the Respondent No. 3, were beyond the syllabus prescribed for the Sixth Semester. The relevant extract of the syllabus prescribed for the practical examination of the Sixth Semester, reads as under: -

***“Practical***

*1. Learn to mark the athletics track for 50m, 100m, 200m, 400m run.*

*2. Learn to prepare a 200m athletic track.*

*3. Learn to mark broad jump field.*

*4. Learn to mark triple jump field.”*

5. At this stage, it is pertinent to note that even though the Petitioners claim that the practical examination was conducted neither as per the syllabus nor as per the procedure, they did not make any complaint or representation in this regard to the Respondent No. 2 at the time of appearing in the practical examination or at any time soon thereafter. It was only after the result was declared on 28.07.2017, when they realized that they had failed in the practical examination, did the Petitioners make a representation dated 01.08.2017 to the Principal of Respondent No.2 bringing out the alleged infirmities in the practical examination, wherein they also highlighted their above average performance in the last five semesters.

6. The Petitioners’ representation to the Principal of Respondent No.2 having remained unanswered, they served a legal notice dated 25.08.2017 to the Respondents, on which also, no action was also taken by the Respondent No. 1. It is in these circumstances, that the Petitioners have approached this Court by way of the present petition. While issuing notice in the petition, this Court vide its order dated 25.10.2017 directed the Respondent No. 4/External Examiner to file

an Affidavit stating therein as to whether or not he had attended the aforesaid practical examination.

7. Pursuant to this Court's order dated 25.10.2017, the Respondent No. 4 has filed a specific Affidavit stating therein that he had attended and conducted the practical examination alongwith Respondent No. 3, on 02.05.2017. The record also shows that while the Petitioners have filed affidavits of some students supporting their stand that Respondent No. 4 was not present at the time when the practical examination was held and that the students were asked to perform events which were outside the syllabus, the Respondent No. 1 has, on the other hand, filed affidavits of some students who have categorically stated that both Respondent No. 3 and Respondent No. 4 had jointly conducted the practical examination on 02.05.2017 and all the questions which were asked from them as part of the viva-voce examination, were as per the prescribed syllabus.

8. In view of the dramatically opposite affidavits from two sets of students, as also of the wholly new plea taken by Mr. Umesh Shandilya, learned counsel for the Petitioners, that the allocation of marks in the practical examination of 25 marks was not conducted as per the prescribed norms, the Respondent No.1 was granted an opportunity to file an affidavit dealing with the aforesaid contention of the Petitioners, which has since been filed vehemently denying the aforesaid plea.

9. Mr. Shandilya vehemently contends that as per the prescribed format, the 25 marks earmarked for the practical examination, were to be divided under three heads namely Practical (10 marks), viva-voce

(10 marks) and Record Book (5 marks). However, he contends the Examiners had, in a wholly arbitrary manner, awarded no marks for the Record Book while awarding 10 marks each for the two practical events and merely 5 marks for the viva-voce. He, thus, contends that the Petitioners have been gravely prejudiced only because the Respondents have failed to adhere to the norms laid down for awarding marks and have divided the same into different heads as per their own *ipse dixit*.

10. On the other hand, Mr Rupal, learned counsel for Respondent No.1 while opposing the petition, submits that the practical examination was conducted strictly as per the applicable rules and contends that out of 105 students who appeared therein, a total of 18 students had failed but only the eight Petitioners have challenged the same on wholly imaginary and baseless grounds.

11. Mr. Rupal submits that the Petitioners' plea that there was a requirement to trifurcate the marks for the practical examination into three sub-heads of 10 marks for practical, 10 marks for viva-voce and 5 marks for the Record Book, is wholly without any basis. He submits that there is no such requirement of trifurcation of marks either in the syllabus or in any other guidelines applicable to the subject degree course. He contends that reliance of the Petitioners on the syllabus applicable to the BA course, where Physical Education is one of the subjects, is wholly misplaced. He submits that the Examiners had, keeping in view the nature of the course, adopted a rational basis to divide the marks in the manner deemed appropriate for the Concerned Subject and there was nothing arbitrary about assigning 10 marks each

to two sports events while reserving 5 marks for viva-voce, in the practical examination for students seeking a specialized degree in Physical Education, Health and Sports.

12. Mr. Rupal further contends that the very fact that the Petitioners have challenged the division of marks and the conduct of the practical examination, only after the declaration of the result, in itself shows that the same is merely an afterthought and contends that such a belated challenge is not maintainable in law.

13. I have heard learned counsel for parties at length and with their assistance, perused the record. The first issue raised by Mr. Shandilya, is, that Respondent No.4/External Examiner was not present at the time of the practical examination conducted on 02.05.2017. In view of the specific affidavit filed by Respondent No.4 himself and a number of students clearly stating that Respondent No.4 was present throughout the practical exam, I see no reason to believe the bald statement of the Petitioners that he was not present during the practical examination.

14. The other issue raised by Mr. Shandilya is that the field events which the Petitioners were asked to perform during the practical examination, as also the questions put to them during the viva-voce, were beyond the prescribed syllabus of the Degree Course. In my considered opinion, even this contention is equally without any merit. The Petitioners had admittedly not raised any grievance in this regard till after declaration of the result on 28.07.2017, when they realized that they had failed in the practical examination and, therefore, there is merit in Mr. Rupal's contention that the Petitioners' pleas are merely

an afterthought. Even otherwise, in my considered opinion, this Court cannot, in the exercise of its power of judicial review, interfere with the opinion of the experts as to what shall be the nature of events, which the students should be asked to perform during the practical examination or the questions which they should be asked during the viva-voce. Merely because the Petitioners claim to be meritorious students, it cannot be a ground to interfere with what they perceive to be beyond the syllabus. I am fortified in my aforesaid conclusion by the decision of the Hon'ble Supreme Court in the case of ***State of Tamil Nadu and Ors. v K. Shyam Sunder & Ors.*** [(2011) 8 SCALE 474, paragraph 27 of which, reads as under:-

*"27. Undoubtedly, the Court lacks expertise especially in disputes relating to policies of pure academic educational matters. Therefore, generally it should abide by the opinion of the Expert Body. The Constitution Bench of this Court in The University of Mysore & Anr. v. C.D. Govinda Rao & Anr., AIR 1965 SC 491 held that "normally the courts should be slow to interfere with the opinions expressed by the experts". It would normally be wise and safe for the courts to leave such decisions to experts who are more familiar with the problems they face than the courts generally can be. This view has consistently been reiterated by this Court in Km. Neelima Misra v. Dr. Harinder Kaur Paintal & Ors., AIR 1990 SC 1402; The Secretary & Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity & Ors., AIR 2010 SC 1285; Dr. Basavaiah v. Dr. H.L. Ramesh & Ors., (2010) 8 SCC 372; and State of H.P. & Ors. v. H.P. Nizi Vyavsayik Prishikshan Kendra Sangh, (2011) 6 SCC 597."*

15. As noted above, the only other issue which has been urged by Mr. Shandilya is that the Respondents have not complied with the

requirement of dividing marks into 3 categories of 10, 10 and 5 for the practical, viva voce and record book respectively. In support of his contention that there was a requirement to divide the marks in the aforesaid manner, Mr. Shandilya has placed reliance on the result sheet wherein there is a column in the prescribed format, the relevant extract of which is reproduced hereinbelow:-

*Year of Examination to be filled in on each page*

.....  
*Subject*.....

*Examination*.....

| <i><b>Rol<br/>l<br/>No<br/>.</b></i> | <i><b>MARKS OBTAINED</b></i> |                                                  |                                     |                                             |                                            |
|--------------------------------------|------------------------------|--------------------------------------------------|-------------------------------------|---------------------------------------------|--------------------------------------------|
|                                      | <i><b>Practic<br/>al</b></i> | <i><b>Viva<br/>-<br/>voce<br/>if<br/>any</b></i> | <i><b>Class<br/>recor<br/>d</b></i> | <i><b>Total<br/>in<br/>figure<br/>s</b></i> | <i><b>Tota<br/>l in<br/>word<br/>s</b></i> |
|                                      |                              |                                                  |                                     |                                             |                                            |

16. Mr. Shandilya has also relied on the Discipline Course, Physical Education in the Contemporary Context, which reads as under:-

***“DISCIPLINE COURSE: Physical Education in the Contemporary Context.***

***Introduction To Physical Education (Introduction, History and Physical Fitness)***

***PART A: THEORY***

***UNIT-1: Introduction***

*1.1. Meaning, Concept, Definition, Need and Scope of Physical Education.*

*1.2. Aim, Objectives, Principles and Components of Physical Education.*

***UNIT-2: Overview of Physical Education with reference to different disciplines***

*2.1 Physical Education in relation to Arts and Science  
 Disciplines: Anatomy, Physiology, Nutrition, Growth,*

*Development, Kinesiology, Biomechanics, Psychology, Sociology, Anthropology, Philosophy, Pedagogy etc.*

*2.2 A Brief Overview of Physical Education in the Historical Perspective.*

### **UNIT-3: Development of Physical Education and Olympic Movement**

*3.1 Development of Physical Education in India, USA, Greece and Rome; Promotion of Physical Education and Sports Schemes, Awards and Honours, Awardees, Trophies/Cups and Eminent Sports Persons.*

*3.2 Olympic Movement: Ancient Olympics, Modern Olympics, Objectives of Olympics, Olympic Motto Flag, Emblem, Torch, Oath and Charter, International Olympic Committee and Indian Olympic Association, Performance of Indian Olympic Association.*

### **UNIT-4: Physical Fitness**

*1.1 Meaning, Definition, Need and Importance of Physical Fitness; Components of Physical Fitness, General and Specific Fitness.*

*1.2 Principles, Means and Methods to Develop measure and maintain different components of Physical Fitness.*

### **UNIT-5: Diet & Posture**

*5.1 Diet and Nutrition; Obesity, Exercise Rest and Sleep.*

*5.2 Posture: Good Posture, Factors Causing Postural Deformities, Remedial Measures for Postural Deformities (Kyphosis, Scoliosis, Lordosis, Knock Knees, Bow Legs, Flat Foot).*

### **PRACTICAL (M.M. 25)**

- 1. Development of Physical Fitness through Calisthenics/Aerobics/Circuit-Training/ Weight Training.*
- 2. Track and Field: To demonstrate techniques of Standing Broad Jump, Long Jump and Vertical Jump.*
- 3. Fundamental Skills, Rules and Regulations of any one of the following team Games: Basketball, Handball, Football, Softball, Volleyball, Korfball, Kabaddi, Hockey and Kho-kho.*

4. To demonstrate the techniques of starting, sprint running, middle, long distance running and finishing
5. To demonstrate the technique of Suryanamaskar.

|                                    |                 |          |
|------------------------------------|-----------------|----------|
| <b><u>PRACTICAL ASSESSMENT</u></b> | (a) Practical   | 10 marks |
|                                    | (b) VIVA        | 10 marks |
|                                    | (c) Record Book | 5 marks  |
|                                    | Total           | - 25     |

**PART C: INTERNAL ASSESSMENT (25 Marks)**

1. Written Test (10 marks)
  2. Project/Assignment (10 marks)
  3. Attendance (5 marks)
- Notes of Examiners, Teachers and students (Common of all paper)*

**Part A : Theory (50 marks)**

*The examiner will set nine questions (Eight descriptive and one short note) equally distributed throughout the entire syllabus; the candidates will be required to attempt any five questions. Each question will carry ten marks.*

**Part B: Practical (25 marks)**

*The candidates will be asked to perform two practicals in final practical examination (5 marks each). Viva-voce (10 marks) and will be required to show their note book for 5 marks. Each examiner is required to give a minimum of 15 to 20 minutes to a candidate to provide enough opportunity for presenting his/her performance, proficiency and presentation in the limited areas of practical examination. Awards of the practical examination should be duly filled in the proforma/award sheet (specified for the purpose).*

**Internal Assessment (25 marks)**

*The candidates will be assessed by the concerned teacher through house examination (10 marks), assignment (10 marks) and attendance (5 marks) as per University of Delhi guidelines*

17. On the other hand, Mr. Rupal has placed reliance on the Ordinances for the award of Bachelor of Science, Physical Education, Health Education and Sports B.Sc (PEHES), the relevant extract whereof is reproduced hereinbelow:-

| <i>Paper</i> | <i>Name of the Paper</i>                                                                                                                                                                                                                                       | <i>M.Marks Theory</i> | <i>M. Marks Practical</i> | <i>M.Marks Int. Assess.</i> | <i>Periods L+P+T</i> | <i>Credits</i> |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|---------------------------|-----------------------------|----------------------|----------------|
| *            | *                                                                                                                                                                                                                                                              | *                     | *                         | *                           | *                    | *              |
| *            | *                                                                                                                                                                                                                                                              | *                     | *                         | *                           | *                    | *              |
| BPE 603      | (a) Track and Filed<br><br>(b) <b>Professional Game:Group III:</b><br><br>Any one of the following game other than the game of specialisation:<br><br>603(b) (i) Football<br><br>603(b)(ii) Hockey<br><br>603(b)(iii)Table Tennis<br><br>603 (b) (iv) Handball | 50<br><br>25          | 25<br><br>15              | 25<br><br>10                | 2+4+1<br><br>1+2=3   | 5<br><br>2     |

18. Mr. Rupal has, thus, contended that the ordinance does not lay down that the marks of the practical examination have to be divided in

any specific format. He has contended that, in the absence of any specified criteria laid down in the syllabus or the scheme for conduct of the practical examination, the examiners were free to devise the manner in which the marks were to be allotted/divided for different aspects of the practical examination. He submits that the reliance placed by Mr. Shandilya on the Discipline Course in Physical Education is wholly misplaced, as the said breakup related the physical education subject in the BA course till the academic year of 2014-2015. He, thus, submits that the examiners have fairly conducted the practical examination and allocated the marks to all 105 students based on their performance in the practical examination. Mr. Rupal has contended that the Respondents have awarded marks in the practical exam to all 105 students in a fair manner.

19. Having carefully considered the scheme of the syllabus for the practical examination of the Degree Course, as laid down in the ordinance, I find that the scheme for the practical examination, did not lay down any specific criteria/manner in which the marks had to be divided and, therefore, in my considered opinion there was no obligation on the examiners to award the marks in a particular manner. I am of the view that merely because the result sheet also had a column for practical, viva-voce and record book, it cannot be held that there was any obligation on the part of the examiners to assign marks into three categories, i.e. 10 marks each for the practical and viva-voce and 5 marks for the record book. The said trifurcation, as has been rightly contended by Mr. Rupal, was applicable only to the subject of Physical

Education meant as an Optional Course for Under Graduate students pursuing BA/B.Com and not to the students of the Degree Course.

20. I also do not find anything arbitrary on the part of the examiners in allocating 10 marks each to two field events and in reserving 5 marks for the viva-voce, while conducting practical examination of students undergoing a specialized Degree in Physical Education, Health and Sports. In the absence of any specific scheme for allocation of marks provided in the ordinance or the syllabus, it was open for the Examiners, who are the best experts in the subject, to decide as to how the marks of the practical examination should be bifurcated. I find absolutely no reason to interfere with the wisdom of the examiners in this respect.

21. For all the aforementioned reasons, I find no merit in the petition. Accordingly, the present petition alongwith pending applications, is dismissed without any order as to costs.



**(REKHA PALLI)**  
**JUDGE**

**MAY 11 , 2018**  
gm

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