

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8406 of 2019

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Shiv Kumar S/o Kusheshwar Yadav R/o Pashupalan Colony, Ward no. 2,
Satyam Nagar, Khara, P.S.- Saharsha, District- Saharsha, Bihar.

... .. Petitioner/s

Versus

1. Aryabhatta Knowledge University, Patna through its Vice- Chancellor.
2. The Vice- Chancellor Aryabhatta knowledge University, Patna.
3. The Examination Controller Aryabhatta knowledge University, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gyan Shankar
For the Respondent/s : Mr.A.K.Ojha

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 29-04-2019

The present writ petition has been filed for quashing the result of third professional M.B.B.S. Part-II Examination, 2018 pertaining to the petitioner herein to the extent the respondents have failed the petitioner all the four subjects on account of cancellation of the current examination. It is further prayed that the respondents be directed to re-check and re-evaluate the answer sheets of the petitioner herein and consequently publish the result of the petitioner pertaining to third professional M.B.B.S. Part-II Examination, 2018.

The brief facts of the case are that the petitioner joined the M.B.B.S. course in the Nalanda Medical College, Patna,



affiliated with Arayabhatta Knowledge University in the month of September, 2014 whereafter he cleared his first professional M.B.B.S. Examination in the year 2015 and the second professional M.B.B.S. Examination in the year 2016. The petitioner had then appeared in the third professional M.B.B.S. Part-I Examination, 2017 whereafter he had appeared in the third professional M.B.B.S. Part-II Examination in the year 2018. The centre for examination pertaining to the third professional M.B.B.S. Part-II Examination, 2018 was fixed at St. Xavier's College of Management and Technology, Digha, Patna. It is the case of the petitioner that he had appeared in all the four papers and had not used any unfair means in the examination in question. It is submitted that neither the Centre Superintendent nor the Invigilator had caught the petitioner with any chit of paper nor his answer sheets were taken away nor any chit was recovered from the possession of the petitioner at any point of time during the examination. Nonetheless, the respondent no. 3 had issued a show cause notice dated 09.02.2019 by which the petitioner was asked to submit explanation to the allegation of him having been caught in possession of copying materials and of being caught copying in the examination. The petitioner had then filed his reply on



18.02.2019 denying the allegations and stating that at no point of time, during the course of examination, any chit was recovered from the petitioner and in fact he had not indulged in any cheating or copying during the course of examination. The result of the third professional M.B.B.S. Part-II Examination, 2018 was declared on 08.03.2019 wherein the petitioner was shown to have failed.

The learned counsel for the petitioner has submitted that neither the petitioner was given any opportunity of hearing nor any chit was shown to him in support of the allegation of copying during the course of the examination with the help of chit nor the answer sheets were shown to the petitioner to corroborate the incident of copying. It is further submitted that the action of the respondents in cancelling the examination is illegal, arbitrary and violative of the principles of natural justice especially in view of the fact that there is no material on record to suggest that the petitioner was found in possession of any chit or paper which was used for copying in the examination.

The learned counsel for the petitioner has relied upon a judgment rendered by a coordinate bench of this Court, in similar circumstances, in CWJC No. 17950 of 2017 (Abhishek Kumar Verma vs. The State of Bihar & ors.) on 22.12.2017,



relevant paragraphs whereof are being reproduced herein below:-

“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.”

The learned counsel for the petitioner has also relied upon a judgment dated 12.03.2018 passed by the learned Division Bench of this Court, in L.P.A. No. 91 of 2018 (The Vice



Chanellor, Aryabhatta Knowledge University, Patna & ors. vs. Abhishek Kumar Verma & ors.), affirming the aforesaid judgment dated 22.12.2017, relevant paragraphs whereof are reproduced herein below:-

“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 Unfair means 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."

The respondents have filed a counter affidavit and the learned counsel for the respondents, referring to the same, has



submitted that on 04.02.2019, during the course of examination of the subject Orthopedics, the petitioner was found copying during the course of the examination by using chit which was reported by the Centre Superintendent through his report dated 04.02.2019 and the chit was also attached therewith whereafter a show cause notice dated 09.02.2019 was issued to the petitioner and after considering the reply submitted by the petitioner on 16.02.2019 a meeting of the Unfairmeans Committee was convened by the Controller of the Examinations, Aryabhatta Knowledge University whereupon the meeting was held on 02.03.2019 and the Committee found that the conduct of cheating in examination falls under category-3 of the Rules, consequently the Committee recommended for cancellation of the petitioner's current examination, whereupon the decision was communicated to the Principle of the college from where the petitioner is pursuing his M.B.B.S. degree. At this stage it would be worthwhile to reproduce the notes made by the Committee under the heading "Offences Committed":-

"The committee considered the case of Shiv Kumar as per report submitted by C.S., St. Xavier's College of Mgmt. & Tech, Patna and the reply submitted by the student against the show cause issued to him. It is recommended that his offence falls in category 3 i.e.



“Utilization of piece of paper / notes / books / chits etc. which is connected with the subject matter of the examination.”

The learned counsel for the respondents has submitted that since the examination of the Orthopedics subject pertaining to the petitioner has been cancelled, the petitioner has been declared ‘failed’, in the result published on 19.03.2019.

I have heard the learned counsel for the parties and perused the materials on record and I find that no enquiry whatsoever has been conducted in order to establish the factum as to from where the said chit was recovered. Though the Centre Superintendent has submitted a report, attaching the chit and has stated therein that the student i.e. the petitioner herein was in possession of copying material and was caught copying but neither the Invigilator nor the Centre Superintendent have been examined by the Unfair Means Committee much less any statement has been recorded by the said Committee so as to establish the factum of the petitioner having been found in possession of the said chit. In fact there is no definite material on record to show that either the petitioner was in possession of the said chit of paper or he was using the same for copying purpose. Further, I find that the respondents have failed to produce either the answer sheet or any extract from the answer



sheet of the petitioner herein pertaining to the concerned subject to show that the petitioner had ad-verbatim copied from the said chit, hence there is no definite evidence to suggest that either the petitioner was in possession of the said chit or had copied from the said chit, hence benefit of doubt is required to be extended to the petitioner herein. Moreover, this Court finds that the present case is squarely covered by the aforesaid judgments rendered in the case of Abhishek Kumar Verma (supra). In fact the case in hand stands on a better footing than the case of the aforesaid Abhishek Kumar Verma (supra). Upon the learned counsel for the respondents being confronted with the aforesaid judgments passed in the case of Abhishek Kumar Verma (supra), the learned counsel could not deny that the present case is squarely covered by the aforesaid judgments.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the writ petition is allowed and the decision of the Unfairmeans Committee, taken in its meeting held on 02.03.2019, qua the petitioner herein regarding cancellation of the current examination of the petitioner herein is set aside and the respondents are directed to publish the result of the petitioner forthwith. The other consequences, as a result of the present writ petition being



allowed, shall follow.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.5.2019
Transmission Date	NA

