

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 135 of 2019***(Arising out of the order dated 13.02.2019 passed in W.P(C) No. 76/2019 by the learned Single Judge)*

Shikhar Chaba S/o Dr. Rakesh Chaba Aged About 23 Years R/o
Block No. 24, Plot No. 25, Nehru Nagar East, Bhilai, District Durg
Chhattisgarh. 490020. **--- Appellant**

Versus

1. Registrar Pt. Deendayal Upadhyay Memorial Health Sciences and Ayush University of Chhattisgarh, Situated At Uparwara, Naya Raipur, (Atal Nagar) PIN 492001, District : Raipur, Chhattisgarh
2. Dean Chandulal Chandrakar Memorial Hospital Pvt. Ltd. Kachandur, Kurud, Road, District Durg PIN 490024, District : Durg, Chhattisgarh
3. Vice Chancellor Pt. Deendayal Upadhyay Memorial Health Sciences And Ayush University of Chhattisgarh, Situated At Uparwara, Naya Raipur (Atal Nagar), PIN 492001, District : Raipur, Chhattisgarh
4. State of Chhattisgarh through Secretary, Department of Health & Family Welfare And Medical Education, Mahanadi Bhawan, Naya Raipur, District : Raipur, Chhattisgarh **--- Respondents**

Presence:

For the Petitioner : Mr. Saurabh Dangi, Advocate
For respondents No.1 & 3 : Mr. N.K. Vyas, Advocate
For respondent No.4 : Mr. Vikram Sharma, Dy.G.A.

Hon'ble Shri Justice P.R. Ramachandra Menon, Chief Justice &**Hon'ble Shri Justice Goutam Bhaduri, Judge****Judgment on Board****Per P.R. Ramachandra Menon, C.J..****17.06.2019**

1. The challenge is against the verdict passed by the learned Single Judge in WPC No.76 of 2019, with reference to the denial of opportunity of hearing before an adverse order was passed against the appellant by the respondent University, virtually debarring the

appellant/writ petitioner from participating in any of the examinations conducted by the University for two years but for granting only an opportunity of 'post decisional hearing'.

2. Heard Mr. Saurabh Dangi, learned counsel appearing on behalf of the appellant, Mr. N.K. Vyas, learned standing counsel representing the University and Mr. Vikram Dixit, learned Dy.G.A., appearing for the State.
3. The sum and substance of the case projected before this Court is that the appellant is pursuing the studies for the final year MBBS course and was participating in an examination conducted by the University. Allegedly, on the date of examination, some malpractice/misconduct was noted on the part of the appellant by the invigilator, particularly when the student was referring to something written or kept in his palm for answering the questions. The student was proceeded against and the matter was reported to the Committee concerned which is conferred with the power to deal with the issue; invoking the power and procedure under clause 6 of Regulation 10 of the University. An order was passed by the University based on the report of the Committee, which came as a bolt from blue, detrimental to the rights and interests of the appellant/writ petitioner and hence it was challenged by filing writ petition before the learned single Judge. The main ground of challenge is with regard to the 'denial of opportunity of hearing' as no notice was ever issued to the appellant before finding him guilty and debarring him from the examinations.
4. According to the learned counsel for the appellant, no malpractice or misconduct was ever committed by him and that he had only written the name of a Scientist on his palm earlier, which did not have any connection with the examination. Since no opportunity of hearing was ever given, the factual and legal position could not be explained and hence the punishment imposed is not correct or sustainable, either on

facts or in law.

5. When the matter came up for consideration before the learned Single Judge, the sequence of events was taken note of and held that the appellant was never heard by the University before passing the impugned order. Accordingly it was made clear that the University had to pass a fresh order, after hearing the writ petitioner by the Unfair Means Committee. The learned single Judge also made it clear that the impugned order shall not be acted upon, unless and until fresh order was passed by the University as mentioned above; crux of which as contained in para 6 of the judgment is as follows:

“It is made clear that before passing fresh order, the petitioner shall be heard by the Unfair Means Committee. It is also made clear that the impugned order shall not be acted upon unless and until the fresh order is passed by the University.”

6. Learned counsel for the appellant submits that, by virtue of the course pursued by the learned single Judge, the University will simply give effect to the order which is already under challenge just after hearing the appellant, without reference to the actual facts and figures based on the view already taken. 'Post decisional hearing' cannot satisfy the requirement of the fundamental rule of *audi alteram partem*. Hence this appeal.
7. Learned Standing Counsel for the University submits that the University has acted only in a transparent manner and there is absolutely no plea of *mala-fides* against the University or the invigilator. It is also pointed out that the University will pursue the matter with an open mind, adding that, pursuant to the verdict passed by the learned Single Judge, a notice of hearing has already been issued to the appellant.
8. After hearing hearing both the sides, we are of the view that no interference is required with the verdict passed by the learned single Judge, but for holding that in view of the admission made from the

part of the University that no notice of hearing was ever given to the appellant and that they are ready to reconsider the matter after hearing the petitioner, the order under challenge which was issued on 02.01.2019 by respondent No.1 would stand set aside. It is ordered accordingly.

9. The University shall consider the matter with reference to the version of the appellant in the light of the relevant provisions of law and finalize the same passing a speaking order, untrammelled by anything contained in the order which stands set aside. The matter is disposed of accordingly.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge