

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6193 of 2020

Prashant Bharti S/o Pradip Kumar, Resident of Village- Purankama, P.O.-
Sheikhpura, PS-Sheikhpura, District-Sheikhpura.

... .. Petitioner

Versus

1. Arayabhatta Knowledge University, Mithapur, Patna through its Vice Chancellor
2. Vice Chancellor, Arayabhatta Knowledge University, Mithapur, Patna
3. Examination Controller, Arayabhatta Knowledge University, Mithapur, Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Sandeep Kumar, Advocate Mr. Alok Kumar @ Alok Kr Shahi, Advocate
For the Respondents	:	Mr. Awadhesh Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 30-06-2020

The present writ application has been filed by the petitioner for quashing his result of Third Professional MBBS Part II Examination, 2019, since the respondents have cancelled the examination of all the four papers and have not evaluated his answer sheet and have failed him in papers, namely, Medicine, Surgery, Obstetrics & Gynecology and Pediatrics. The petitioner has further prayed for directing the respondents to evaluate his answer sheet of the aforesaid papers and declare his result of the Third Professional MBBS Part II Examination, 2019.

2. The undisputed short facts of the case are that the petitioner had got admission in 2015 in MBBS course in



Government Medical College, Bettiah affiliated with Aryabhata Knowledge University (for short 'the University'). He had appeared for the Third Professional MBBS Part II Examination, 2019 held in January, 2020. His examination centre was at Motihari College of Engineering, Motihari (for short 'the College'). He had appeared in the examination for Medicine II paper at the examination centre on 10.01.2020. The invigilator found him being in possession of a chit and copying answer in the answer sheet from the said chit. Thereafter, an explanation was sought for from him to which he replied on 23.01.2020. He denied that he was copying in the examination by using chit. He contended that a piece of paper was found near his desk by the invigilator, which did not belong to him. After the filing show cause reply by the petitioner, the result of Third Professional MBBS Part II Examination, 2019 was declared in which it was disclosed that his examination of all the four papers have been cancelled.

3. Mr. Sandeep Kumar, learned counsel appearing for the petitioner contended that the petitioner was not accorded any opportunity of hearing. He was not shown the answer sheet or any chit or any other relevant materials in support of the allegation of copying by using chit. He contended



that the action of the respondents in cancelling his examination of all the four papers is illegal, arbitrary and violative of principles of natural justice. According to him, there is nothing to suggest that the petitioner was found in possession of any chit or paper from which he was copying in the examination. He argued that in absence of any inquiry held in order to establish charge of cheating, the decision of the University to cancel the result of the petitioner is based on no material on record. He contended that due to illegal, arbitrary and unjust decision of the University, the entire career of a young MBBS student would be jeopardized.

4. In reply, Mr. Awadhesh Kumar, learned counsel appearing for the University submitted that on 10.01.2020, the petitioner had appeared in the examination for Medicine II paper at the examination centre. During examination, the invigilator found him being in possession of a chit and also copying answer in the answer sheet from the said chit. Thereupon, in adherence to clauses 5 and 6 of the Rules for Unfair Means of the University, the invigilator filled up the form for reporting unfair means case in the examination hall, wherein it was specified that the date of incident was 10.01.2020 and the time of incident was 12.40 pm. In the said form, the invigilator



had recorded in the remarks column: “the petitioner was found with chit”. The petitioner had also put his signature on the said form. The centre superintendent also filled up a separate form for reporting cases of unfair means wherein it was stated in the remarks column that the examinees were warned many times not to carry any unwanted materials in examination hall, but the petitioner was caught copying answer in the answer sheet using the chit enclosed. On the said form also, the petitioner has put his signature.

5. Mr. Awadhesh Kumar further submitted that a joint report of the Observer, Magistrate and the Centre Superintendent of the College was also submitted to the Examination Controller of the University vide letter no. 427 dated 10.01.2020. The act of the petitioner was also reported by the Principal of the College to the Examination Controller vide letter no.428 dated 10.10.2020 and the petitioner was expelled from the examination on that date. The misadventure of the petitioner further continued when after being caught copying in the examination, the petitioner and other examinees began creating chaos at around 2.30 pm. and began shouting slogan and abusive language against the Principal and they also resorted to manhandle the teachers and the staff and damaged



the window glasses and the street lights situated within the College campus. The Principal of the College reported the matter to the Officer-in-charge of Muffasil Police Station and Muffasil P.S. Case No. 23 of 2020 dated 11.01.2020 was registered *inter alia* under Sections 353 and 427 read with 34 of the Indian Penal Code against the petitioner and others.

6. He argued that in furtherance of the above, as per clause 7 of the Rules for Unfair Means of the University, the University sought for an explanation from the petitioner with regard to the complaint reported by the invigilator, observer and the centre superintendent by issuing a show cause notice to him on 17.01.2020. The said show cause notice contained the chit, as enclosure, which was being used by the petitioner during examination for copying answer in the answer sheet. A copy of the show cause was also forwarded by the Examination Controller of the University to the Principal of the College for information. After having received the notice, the petitioner submitted his reply on 23.01.2020 wherein he did not deny or negate the recovery of the chit from his possession, but he gave an excuse to the effect that he saw a piece of paper near his desk and being anxious, he decided to remove the piece of paper from his vicinity, when he was doing so, he was caught by



the invigilator, who misunderstood the situation and thought that he had indulged in cheating. The petitioner has also admitted to have signed the form for reporting cases of unfair means. He has nowhere alleged that he was compelled or forced to sign the form for reporting the cases of unfair means.

7. He contended that in adherence to clauses 6 and 7 of the Rules for unfair means, the complaint and the report submitted by the centre superintendent as well as the reply to the show-cause submitted by the petitioner was placed before the Unfair Means Committee, in its 36th Meeting, for its consideration and decision making with regard to punishment according to nature of the offence. On consideration of case and materials submitted in favour of the allegation against the petitioner, the Unfair Means Committee gave a finding that after going through the contents of the chit and answer book it was found that the chit had been used for giving answers to the question. Hence, the nature of offence invited punishment stipulated in category 3. Accordingly, decision was taken for cancellation of current examination of the petitioner. He has further contended that the decision to cancel the result of the petitioner by the University was taken after giving due adherence to the principles of natural justice and there is no



illegality or infirmity in the order impugned passed by the University.

8. I have heard learned counsel for the parties and carefully perused the record.

9. The University has framed its rules for unfair means and the provisions of punishment for cases of unfairmeans, which reads as under :-

“Rules For Unfairmeans

1. Unfairmeans committee will consider only those cases which are reported by the Centre Superintendent of Examination concerned, Magistrate on duty of the concerned examination and/or any competent Authority of the University.
2. The following rules for unfairmeans shall come into effect “from the Examinations held in the year 2012 and onwars.
3. Any other act/person who is helping/promoting/supporting or facilitating unfairmeans during examination will be punished by the Vice-Chancellor by taking suitable administrative and punitive action.
4. The Centre Superintendent on the report of Invigilator(s) or otherwise submit his own report to the University that the students in the enclosed list were detected using unfairmeans in the Paper (Name of paper and date of examination)
5. The Centre Superintendent will also submit



all the evidence which was found with student doing unfairmeans.

6. The report submitted by the Centre Superintendent will be placed in the Unfairmeans Committee constituted by the University for consideration under the category mentioned under clause 11.

7. On receipt of complain of Unfairmeans from the Centre Superintendent the University Authorities shall obtain explanation by issuing a show-cause to the report candidate and shall produce the same to the Unfairmeans Committee.

8. If no explanation is received within the specific period it will be assumed that he/she/they do not have anything to say and action so taken by the University against him/her/them on the basis of the report of the Centre Superintendent will carry.

9. Unfairmeans cases reported by the Centre Superintendent or/and Magistrate on Duty or/and Observers deputed by the University/Authorised Representative of AKU will be considered by the Unfairmeans Committee under the following category and punishment will also be decided according to the nature of offence:

The provisions of punishment for various reported cases of Unfair-means Cases (UMC) in Examination during End Semester/Special Examination is as given below:



Category	Nature of offence	Approved/Revised Punishment
1.	Possession of piece of paper which is unconnected with the matter or making identifying marks on the answer book	Cancellation of the Examination in that paper.
2.	Possession of piece of paper, which is connected with the subject matter but not utilized.	Cancellation of the Examination in that paper.
3.	Utilization of piece of paper / notes / books / chits etc. which is connected with the subject matter of the Examination.	Cancellation of the Current Examination.
4.	Substituted replacing, changing or adding pages in the answer book supplied to the candidate, taking answer book outside the examination hall, tempering with material evidence, threatening the persons connected with the examination and possession of Mobile or any other electronic gadget having capability of mass storage and programming during Mid or End Semester Examination.	Cancellation of current examination and debarred from any examination in the next one academic semester. After next academic semester the student has to get registration in the same semester and attend classes (i.e. readmission)
5.1	Impersonation: (a) If the impersonator is identified to be a student of the University.	(a) His/Her admission be cancelled and He/She will be expelled from the University. He/She will be also handed over to police / Magistrate for action under law.
	(b) If the Impersonator is identified to be other than a student of the University.	(b) He/She will be also handed over to police / Magistrate for action under law.
	(c) In case of both 50.1(a) & (b) above:- in respect of the student for whom the	(c) His/Her admission be cancelled and He/She will be



	impersonator was appearing.	expelled from the University. He/she will be also handed over to police / Magistrate for action under law. However if the student has informed regarding absence from examination in advance with valid reasons and supporting documents to the Controller of Examination then his/her current examination shall be cancelled after enquiry and action as provision under the law shall be initiated after enquiry & confirmation.
5.1	Disruption of examination by slogans or Gherao, leading to cancellation of examination.	Cancellation of the Examination in that paper (As for UMC-2 above) and reduction of one grade whenever such students appear in the cancelled paper(s).
5.3	Snatching or tearing of answer book of other examinees.	Cancellation of current Examination (As for UMC-3 above)
5.4	Threats or assault or use of force against persons connected with examination.	Cancellation of current Examination and debar from any Examination in the next one academic semester i.e. after one academic semester, the student(s) has / have to get registered in the same semester and attend classes (i.e. readmission) (As for UMC-4 above)
5.5	Exhibition Gross indiscipline	Disciplinary action



		and legal action be initiated considering the seriousness of the offence.
5.6	Illegal activities by examinees.	Any or all of the aforesaid punishment, considering the seriousness of the offence.

1. A student having punished under UMC then shall not be eligible for award of any University medal or any kind of award or character certificate in future.
2. The provision of punishment for various reported cases of Unfair Means Case (UMC) in Examination during Mid Semester Examination is as given below:

Category	Nature of offence	Approved/revised punishment
1.	Possession of piece of paper which is unconnected with the subject matter	Cancellation of the Examination in that paper.
2.	Possession of piece of paper, which is connected with the subject matter but not utilized.	Cancellation of the Examination in that paper.
3.	Utilization of piece of paper/ notes / books / chits etc. which is connected with the subject matter and any act of indiscipline.	Cancellation of all the papers of the current Examination and disciplinary action which may lead to debarment from the End Semester Examination and any other legal action may be initiated depending upon the nature of the offence.



These provisions shall come into force from Even Semester Examination Session 2013-14 and shall be incorporated in the respective curricula for UG/PG/Ph.D Programs.”

10. After having received the show cause notice, the petitioner submitted his reply dated 23.01.2020, which is annexure 2 to the present application. The relevant show cause reply dated 23.01.2020 submitted by the petitioner reads as under:-

“ To

Controller of Examination

Aryabhatta Knowledge University, Patna

Date:-23/01/2020

Through- Proper channel

Subject- Regarding explanation of accusation of unfair means by Motihari College of Engineering.

Respected Sir,

With due inspect in response to letter no. 27/AKU/2015. I Prashant Bharti Registration No. 15201209042, Exam seat No. 41008 of 3rd Professional MBBS-II from GMC, Bettiah, was accused of unfair means by Motihari College of Engineering on the basis of a piece of paper found near my desk by the invigilator which was not brought by me to exam hall and I had not idea of it. I saw



the piece of paper near my desk and I got anxious and decided to remove that piece of paper from my vicinity. While removing that piece of paper I was caught by the invigilator and he misunderstood the situation and thought that I was cheating with that piece of paper. There was no intention from my side to use that piece of paper in any form of unfair means. I did not write anything using that piece of paper. I was not ready to sign the unfair means form at all, but out of my natural fear and anxiety I signed the unfair means form because I was afraid that some legal action could be taken against me. The answer sheet was taken 1 hour before the completion of exam. Though I could not attempt all the questions, the answer that I have written are all based on my own reading and memory.

I respect all the rules set by the Examination Committee of AKU. I followed each and every rule set by the Examination Committee and have given 3 professional examination on basis of my knowledge and caliber and have passed it without any accusation of unfair means. I request that this being my final professional exam and the hard work that I have put in for this examination should be considered by the concerned authority.



I request the examination committee and concerned authorities hear my plea, consider my Medicine-II answer sheet for evaluation and give me the chance to attend further exams of remaining subject.

I would be thankful to the Committee for my whole life.

Yours Faithfully

Name- Prashant Bharti

Registration No.15201209042

Seat No.41008”

11. It would be apparent from the show cause reply submitted by the petitioner that he did not deny the recovery of chit from his possession. However, he took a plea that he saw the piece of paper near his desk and being anxious, he decided to remove that piece of paper from his vicinity. While removing that piece of paper, he was caught by the invigilator, who misunderstood the situation and thought that he was cheating with the piece of paper.

12. In terms of the Rules for Unfair Means of the University, the complaint and the report submitted by the centre superintendent as well as the reply to the show cause submitted by the petitioner were placed before the Unfair Means Committee in its meeting.



13. On consideration of the case and the materials submitted in favour of the allegation against the petitioner that he was caught copying answer in the answer sheet using the chit enclosed, the Unfair Means Committee gave a finding as under :-

“The Committee considered the case of Prashant Bharti as per report submitted by C. S. Motihari College of Engineering, Motihari and Observer. The Committee also perused the reply of the student dated 23.01.2020. After going through the contents of the chit and answer book it has been found that the chit has been used for giving answers to the question. So under these facts it is recommended that the offence falls in category 3 i.e., “Utilization of piece of paper/ notes/ books/ chits, which is connected with the subject matter of the examination.”

14. In view of the aforesaid finding in respect of allegation made against the petitioner, the Unfair Means Committee took decision for cancellation of the current examination of the petitioner.

15. It would be pertinent to note here that education institutions like the universities or the boards set up inquiry committee to deal with the unfair means cases by



candidates. It is within the domain of such domestic tribunals to decide the relevant questions in the light of the materials placed before them. While dealing with the validity of the impugned orders passed by the universities in unfair means cases, under Article 226 of the Constitution of India, the High Court is not expected to sit in appeal over the decision in question.

16. In **Board of High School and Intermediate Education, U. P. Allahabad & Anr. vs. Bagleshwar Prasad & Anr. [AIR 1966 SC 875]**, the respondent Bagleshwar Prasad filed writ petition against the Board of High School and Intermediate Education, U.P. Allahabad (for short 'the Board') and its secretary challenging the validity of the order passed by the Board cancelling his result at High School Examination held in 1960. The charge against the respondent was of having used unfair means in three papers. The Board cancelled his result after holding inquiry. The High Court set aside the imposition of penalty on the ground that the order of penalty was based upon no evidence. In appeal, a three-judge bench of the Supreme Court held as under:-

“... The High Court was very much impressed by the fact that the respondent could not have looked back and copied from the answer book of the other candidate, and



the High Court did not think that there was any evidence to show that the other candidate could have copied from the respondents paper with his connivance. We have looked at the incorrect answers ourselves and we are not prepared to hold that the identical incorrect answers were given by the two candidates either by accident or by coincidence. Some of the incorrect answers, and, particularly, the manner in which they have been given, clearly suggest that they were the result of either one candidate copying from the other, or both candidates copying from a common source. The significance of this fact has been completely missed by the High Court. The question before the Enquiry Committee had to be decided by it in the light of the nature of the incorrect answers themselves, and that is what the Enquiry Committee has done. It would, we think be inappropriate in such a case to require direct evidence to show that the respondent could have looked back and copied from the answer written by the other candidate who was sitting behind him. There was still the alternative possibility that the candidate sitting behind may have copied from the respondent with his connivance. It is also not unlikely that the two candidates may have talked to each other. The atmosphere prevailing in the Examination Hall does not



rule out this possibility. These are all the matters which the Enquiry Committee had to consider, and the fact that the Enquiry Committee did not write an elaborate report, does not mean that it did not consider all the relevant facts before it came to the conclusion that the respondent had used unfair means.”

17. The Court has laid down the test which must guide the High Court in exercise of its jurisdiction under Article 226 of the Constitution when dealing with the case of inquiries by the universities and by educational bodies into the use of unfair means in para-12 as under :-

“12. In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the Universities or appellant No. 1 set up Enquiry Committees to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic Tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of the adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence.



This problem which educational institutions have to face from time to time is a serious-problem and unless there is justification to do so, courts should be slow to interfere with the decisions of domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities under [Art. 226](#), the High Court is not sitting in appeal over the decision in question; its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence, at all, the High Court would be justified to quash that order. But the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Enquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves and in holding such enquiries, the Tribunal, must scrupulously follow rules of natural justice; but it would, we think, not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary courts of law. In the present case, no animus is suggested and no malafides have been



pleaded. The enquiry has been fair and the respondent has had an opportunity of making his defence. That being so, we think the High Court was not justified in interfering with the order passed against the respondent.”

18. These observations squarely cover the case of the petitioner.

19. In the present case, as discussed above, it would be evident that the petitioner himself has admitted that the chit in question was recovered from his possession. The petitioner was issued a show-cause notice to which he had submitted his reply, which was considered by the Unfair Means Committee and only, thereafter, the decision was taken. Thus, the principle of natural justice was scrupulously followed. The petitioner has also not alleged any animus or mala fide against the invigilator or the centre superintendent or the members of Unfair Means Committee. The rules for unfair means, as noted hereinabove, framed by the University were also scrupulously followed while holding inquiry into the offence alleged against the petitioner. Since the petitioner was found utilizing a piece of chit, the offence fell in category 3 of the rules as a result of which his current examination of all the four papers was cancelled. When no animus and mala fide has been pleaded and



the inquiry has been fair and the petitioner had an opportunity of making his defence, there would be no reason before this Court to interfere with the order passed against him cancelling his current examination of all the four papers.

20. The writ application is devoid of any merit.
It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

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CAV DATE	NA
Uploading Date	30.06.2020
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