

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21287 of 2019

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Roushan Ranjan S/o Jayram Yadav Resident of Village- Mohanpur, P.O.-
Sripurhati, P.S.- Pandol, District- Madhubani.

... .. Petitioner/s

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.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 21303 of 2019

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Mamta Kumari, S/o Bhagwan Das Paswan, Resident of Village- Bathoi, P.O.-
Pandarak, P.S.- Bhadhor, District- Patna.

... .. Petitioner/s

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.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 21426 of 2019

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Ashutosh Kumar Son of Ramesh Ram, Resident of Village- Mathanpura, P.O.
Pipra, P.S. G.B. Nagar Tarwara, District- Siwan.

... .. Petitioner/s

Versus

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

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 21500 of 2019

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Rahul Raj S/o Pramod Singh Resident of Village- Beri, P.O.- Beri, P.S.-
Salaiya, District- Aurangabad

... .. Petitioner/s

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
... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 21660 of 2019

Md. Naurez Alam S/o Md. Naeem Resident of Village- Rampur, P.O.- Muskipur, PS- Tarapur, District- Munger.

... .. Petitioner/s

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.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 22071 of 2019

Aakash Kumar @ Akash Kumar S/o Shiv Shankar Singh, Resident of Mohalla-Shivaji Colony, Ward No. 6, P.O.-Purnea, P.S.-K. Hat, District-Purnea.

... .. Petitioner/s

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.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 22804 of 2019

Shyam Sundar Choudhary S/o Ram Bilash Choudhary Resident of Village-Hansi, P.O. Garhbanaili, P.S.- Begumpur, District- Purnia.

... .. Petitioner/s

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.

... .. Respondent/s



Appearance :

(In all cases)

For the Petitioners : Mr. Sandeep Kumar, Advocate
Mr. Rohit Raj, Advocate
For A.K. University : Mr. Anand Kumar Ojha, Advocate
Mr. Awdhesh Kumar, Advocate
Mr. Priyank Deepak, Advocate
Mr. Amit Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

8 17-01-2020 Heard Mr. Sandeep Kumar, the learned counsel appearing on behalf of the petitioners of all the writ petitions and Mr. Anand Kumar Ojha, the learned counsel appearing on behalf of Aryabhatta Knowledge University, Patna duly assisted by Mr. Awdhesh Kumar.

The petitioners in these writ petitions questioned the action taken by the Aryabhatta Knowledge University, Patna based on the allegations that the petitioners have used unfair means in Second Professional M.B.B.S. Examination, 2018 and to quash the result of Second Professional M.B.B.S. Examination, 2018 of the petitioners in which the Respondent-University has cancelled the examination of all the four papers of petitioner, Roushan Ranjan of CWJC No.21287 of 2019, Rahul Raj, petitioner of CWJC No.21500 of 2019 and Mamta Kumari, petitioner of CWJC No.21303 of 2019. Although initially only in one paper in which they are alleged to have found using unfair means was cancelled but by subsequent order



passed by the University and communicated to the petitioners, the petitioners have been declared to have failed in all subjects and they have been debarred from appearing in the current examination. The petitioners of other four writ petitions have only been declared failed in one subject in which they are alleged to have found using unfair means.

Brief facts bereft of unnecessary details are that the petitioners are the Second Year M.B.B.S. students of Patna Medical College and Nalanda Medical College. The petitioners appeared in Second Year M.B.B.S. Examination but after completion of examination, the petitioners were served with a show cause notice received by the petitioners on 17.07.2019. The petitioners were called upon to show cause on the allegation that they were caught in possession of chit and were copying in the exam of Microbiology (Annexure-1). The petitioners submitted their show cause and denied to have found copying in the exam by using chit. The petitioners further replied that at no point of time, any chit or mobile was recovered from their respective possession and no such incident happened while the petitioners were appearing in all the papers of Second Year M.B.B.S. Examination (Annexure-2). The result of Second Year M.B.B.S. Examination, 2018 of the petitioners were declared on



16.10.2019 but the result of the petitioners were shown as Cancelled Current Examination (Annexure-3).

Counter affidavit has been filed on behalf of respondent, Aryabhata Knowledge University and its authority. In sum and substance in reply the respondents stated that on 06.07.2019 during the course of examination of Microbiology-I, the petitioners were caught red handed while they were indulged in cheating and using unfair practice by copying from a chit and writing the answers of the questions. The Invigilator, the Centre Superintendent and the Observer of the University reported the matter to the University on 06.07.2019. It is further stated that as per the provisions contained under Rule 7 of the Rules of unfair means (Annexure-4) framed by the University in order to conduct free and fair examination and upon such, show cause notice along with the chit recovered from the petitioners was issued calling upon the petitioners to explain. The show cause was placed before the Unfairmeans Committee and the Unfairmeans Committee in its meeting considered the report dated 06.07.2019 and 08.07.2019 of the Centre Superintendent and reply of the petitioners but the reply of the petitioners was found unsatisfactory and accordingly, the Unfairmeans Committee took decisions for imposing punishment of



cancellation of examination which was communicated to the petitioners through the Principal and accordingly, the result was published showing the result cancelled.

The only question arises for consideration is whether the Unfairmeans Committee of the University held internal enquiry in accordance with law and after considering the report of the Invigilator and Centre Superintendent and on consideration of the show cause reply of the petitioners and gave its recommendation to declare the result of the petitioners cancelled is proper, legal and justified?

Mr. Sandeep Kumar, learned counsel for the petitioners submits that the petitioners appeared in all the papers of Second Year M.B.B.S. Examination and at no point of time during the course of examination, any chit/mobile was recovered from possession of any of the petitioners nor the Invigilator found the petitioners copying and writing the answers from any chit of paper or from smart phone but all of a sudden, the petitioners were served with show cause to explain on the basis of the report of the Invigilator that they were found copying from chits while answering the question papers in the Second Year M.B.B.S. Examination. It is further submitted that the petitioners in their reply categorically denied the recovery of



any chit of paper during the course of examination. The Invigilator did not stop the petitioners from answering any question on the allegation of using unfair means at any time during examination nor the matter was reported to the Centre Superintendent. After examination was over, the Invigilator is said to have reported that chits were inside the examination hall near the sitting of the petitioners and from one of the petitioners, namely, Md. Naurez Alam, mobile phone was recovered. It is further submitted that from Annexure-A series of the counter affidavit, it transpires that Roushan Ranjan, petitioner of CWJC No.21287 of 2019 was caught using chit to write the answers in subject Microbiology-I but no chit of paper is attached with the report nor chit was attached with the show cause notice. All the petitioners have very categorically stated in their replies that no chit of paper or smart phone was recovered from their possession while they were taking up their examination and on mere suspicion that the petitioners might have used the chit or smart phone, they have been called upon to show cause. The Unfairmeans Committee did not record any finding on the point using unfair means on evidence and recommended for cancellation of examination. Even the smart phone said to have been seized/sealed has not been produced before the



Unfairmeans Committee and this fact itself shows that no smart phone was recovered from possession of Md. Naurez Alam and the petitioners have not been confronted with any chit or paper alleged to have been recovered from the examination hall in which the petitioners were sitting. It is further submitted that on the same and similar facts this Court by order dated 22.12.2017, passed in CWJC No.17950 of 2017 (Abhishek Kumar Verma vs. The State of Bihar & Ors.) set aside the order of the University declaring Abhishek Kumar Verma, the petitioner of that case, failed on the basis of the allegation that he also used chit of paper while writing answers of the questions of Anatomy. The University filed L.P.A. No.91 of 2018 and a Division Bench of this Court affirmed the order of the learned Single Judge by order dated 12.03.2018, passed in L.P.A. No.91 of 2018. It is submitted that without a cogent evidence, punishment for cancellation of the result is illegal and that will have bad impact on the future of the petitioners.

Mr. Anand Kumar Ojha, learned counsel for the Aryabhatta Knowledge University has very forcefully put forth his submissions and submits that to maintain the sanctity and probity of examination, the University framed Regulations and constituted Unfairmeans Committee to look into the matter on



the reports of the Invigilator, Centre Superintendent with regard to the use of unfair means by an examinee. It is submitted that the Unfairmeans Committee acts as quasi judicial authority and as such of course order passed as a result of the said procedure would be liable to be challenged under Article 226 of the Constitution of India and if the Court is satisfied that the said order is based on no evidence at all, the same can be quashed but at the same time, the Court while exercising power under Article 226 should be slow to interfere in the finding of the quasi judicial authority and not to reappraise the evidence and not come to a different finding recorded by the authority dealing with the unfair means committed against the petitioners on the ground of insufficiency of evidence. The learned counsel in order to fortify his submissions placed reliance on the judgment of the Hon'ble Supreme Court reported in AIR 1966 SC 875 (The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad & Ors.). It is further submitted that while dealing with the question as to whether the Committee was justified in coming to the conclusion against the respondent, it would not be reasonable to exclude from consideration the circumstances under which the whole enquiry came to be held and the general background of the prevailing disturbed and



riotous atmosphere in the examination hall. It has been submitted that the Hon'ble Supreme Court has very categorically come to a finding that it would be inappropriate in such a case to require direct evidence to show that the respondent could have looked back and copied from the answers written by other candidate who was sitting behind him. It is further submitted that while dealing with the enquiry report or finding of the Unfairmeans Committee, it is necessary to bear in mind that educational institutions like the University set up enquiry committee to deal with the problems posed by adoption of unfair means by candidates and it is within the jurisdiction of such domestic tribunals to decide relevant questions in the light of the evidence adduced before them. Mr. Anand Kumar Ojha, learned counsel for the University further placed his reliance on the judgment of the Hon'ble Supreme Court reported in (1973) 3 SCC 424 (Prem Prakash Kaluniya Vs. The Punjab University & Ors.) and submits that the Hon'ble Supreme Court has also held that in dealing with such cases of unfair means faced by such institution it should be appreciated by the High Court and so long as the enquiry held was fair and it afforded the candidate an opportunity to defend himself, the matter should not be examined with the same strictness as applicable to criminal



charges in the ordinary courts of law. There is hardly any justification for saying in the present case that the finding of the Unfairmeans Committee was based on no evidence. It is submitted that one thing must be bear in mind beyond doubt that in matters of enforcement of discipline this Court must be very slow in interference. After all, the authorities in charge of education whose duty is to conduct examinations fairly and properly, know best how to deal with situations of this character. One cannot import fine principles of law and weigh the same in golden scales. In the present system of education, the system of examinations is the best suited to assess the progress of the student so long as they are fairly conducted. Interference by court in every case may lead to unhappy results making the system of examination a farce. For instance, we cannot but strongly condemn copying in the examination which has grown into canker of mass copying. Such unhealthy practices which are like poisonous weeds in the field of education must be rooted out in order that the innocent and the intelligent students are not affected. Mr. Ojha while placing reliance on the judgment of the Hon'ble Supreme Court reported in (1994) 1 SCC 6 (CBSE Vs. Vineeta Mahajan & Ors.) submits that the Rule clearly defines "the use of unfair means at the



examination” and lays down in simple language that a candidate having in possession, papers relevant to the examination in the paper concerned, shall be deemed to have used unfair means at the examination. The sine qua non, for the misconduct under the rule, is the recovery of the incriminating material from the possession of the candidate. Once the candidate is found to be in possession of papers relevant to the examination, the requirement of the Rule is satisfied and there is no escape from the conclusion that the candidate has used unfair means at the examination. The Rule does not make any distinction between bona fide or mala fide possession of the incriminating material. Mr. Ojha placed reliance on catena of judgments but from perusal of the judgments on which Mr. Anand Kumar Ojha, the learned counsel for the University, placed his reliance, I find that the facts of those cases are quite different and not similar and alike to the facts of the present case in hand.

Of course, there are different ways in which the examinee can use unfair means. Slightest difference of facts and the circumstances of the case would make a difference in the judgment of the Court. In the present case, the facts are almost admitted. The petitioners appeared in their examination of Second Year M.B.B.S. course on different dates but while the



petitioners were taking up examination, neither the Invigilator nor the Centre Superintendent found the petitioners indulging in any unfair means. The Invigilator reported on 06.07.2019 and 08.07.2019 that the petitioners used unfair means while answering the questions copying with a chit and in one case a mobile phone is said to have been recovered from one of the petitioners. It appears that the Invigilator who was entrusted with the work to keep vigilance in a room did not spot while the petitioners were taking up examination that the petitioners were indulged in any unfair means. The Invigilator reported the matter to the Centre Superintendent only after the examination was over. Had the Invigilator or Centre Superintendent or the Magistrate deputed at the examination centre observed minimum care and caution during the course of examination, the Invigilator should have reported the matter to the Centre Superintendent immediately when any of the petitioners was found indulging in unfair means while answering question papers by copying from a chit but neither the chit was recovered from the possession of any of the petitioners which bears the signature of the petitioners. The petitioners were not even stopped from answering further questions after found using unfair means. In fact no step was taken to prevent the petitioners



while using unfair means. When the petitioners were called upon to show cause, the petitioners very categorically denied to have used any unfair means. The petitioners also denied the factum of recovery of any chit/mobile or smart phone from their respective possession. The Unfairmeans Committee did not record any specific finding on the basis of the facts and the show cause given by the petitioners that the petitioners committed any grade of unfair means as per the Regulation framed by the University but recommended for cancellation of the result of the petitioners. No evidence save and except the report of the Invigilator was placed before the Committee. Neither the chit of paper or smart phone belonging to a candidate was given to the petitioners in order to explain. I am very much conscious and aware of the facts that the High Court while exercising power under Article 226 of the Constitution of India should be slow in interfering into the finding of a quasi judicial authority if it is based on evidence. The High Court should not sit in appeal over the finding of the such authority who is in the case of the University entrusted with the pious duty to maintain the sanctity and probity of the examination. There is no material or the evidence on record that there was riotous and disturbed condition while the petitioners were



appearing at the centre of examination to show that if the Invigilator had reported the matter while petitioners were using unfair means, the situation would have gone out of control on account of riotous behaviour of the examinees. In absence of any such situation and circumstances, the conduct of the Invigilator and the Centre Superintendent is itself doubtful that they did not spot the examinees while using unfair means nor prevented them from using unfair means or prevented them from further appearing in the examination after recovery of the chit from their possession. There is no such material or the circumstance before the Unfairmeans Committee that the Invigilator was prevented by any of the examinees even by using any word against the Invigilator.

Having considered the facts aforesaid, I find that the report of the Unfairmeans Committee is based on no evidence and inflicting of punishment on such report by the University for cancellation of examination of the petitioners in Second Year M.B.B.S. course or any paper of Second Year M.B.B.S. course is illegal and not sustainable. Accordingly, result published and shown as cancelled (Annexure-3) is set aside. The respondents are directed to publish the result of the petitioners.

Mr. Anand Kumar Ojha, the learned counsel for the



University submits that Aryabhata Knowledge University could not install the CCTV in time due to lack of infrastructure and amenities and examination was held without CCTV surveillance. The University is directed to take steps for holding the future examination at appropriate centres and if possible under CCTV surveillance.

Accordingly, the writ petitions are allowed.

(Prabhat Kumar Jha, J)

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