

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.127

LPA-1707-2023 (O&M)

Date of decision : 15.11.2023

Shivam Tanwar and others

..... Appellants

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present : Mr.Ashwani Kumar Chopra, Senior Advocate, with
Mr.Vidul Kapoor, Advocate, for the appellants.

Mr.Hitesh Pandit, Addl.A.G., Haryana.

Mr.H.S.Gill, Advocate, for respondents No.2 to 5.

* * * * *

DEEPAK SIBAL, J. (Oral)

1. The present intra court appeal has been preferred to challenge therein judgment dated 02.11.2023 passed by a learned Single Judge of this Court dismissing the appellants' writ petition through which they had challenged several orders passed by the Pt. Bhagwat Dayal Sharma University of Health Sciences, Rohtak (for short, the University) cancelling the appellants' entire MBBS 1st Professional Examination on the ground that while appearing in the examination of Biochemistry the appellants had indulged in unfair means.

2. The facts, in brief, which are required to be noticed for deciding the instant appeal are that in the year 2021 the appellants, on the basis of their score in the National Eligibility-cum-Entrance Test (NEET), were admitted to the MBBS course in Adesh Medical College and Hospital, Shahabad (for short, the Medical College). After having attended the requisite classes of the MBBS Ist Professional the appellants appeared in the final examinations of the said course which took place between 09.02.2023 and 19.02.2023. The examination centre allotted for them to appear in the said examination was at the Shri Krishna Govt.

Ayurvedic College, Kurukshetra (for short, the examination centre). On 09.03.2023, the University declared the results of the MBBS 1st Professional in which all the appellants were declared “pass”. Resultantly, the appellants were promoted to the MBBS 2nd Professional. On 11.10.2023 a letter from the University was received by the principal of the Medical College as per which a complaint from the Registrar, S.K.Ayush University, Kurukshetra had been received by the University with respect to commission of irregularities in the examination centre where the appellants had appeared in the subject of Biochemistry on 17.02.2023. Therefore, the Standing Committee on Unfair Means Cases of the University (for short, the UMC Committee), desired the appellants to appear before it at 10:30 a.m. on 12.10.2023. The principal of the Medical College was asked to serve a copy of the said letter upon the appellants.

3. As desired by the UMC Committee, the appellants appeared before it on 12.10.2023 at 10:30 a.m. and denied having taken part in any irregular activity during the course of taking their examination on 17.02.2023. However, on 12.10.2023 itself the UMC Committee decided to cancel the appellants’ entire MBBS 1st Professional Examination. Such decision of the UMC Committee was conveyed to the appellants through letter of the University dated 17.10.2023. The appellants filed an application before the Controller, examinations of the University seeking therein reconsideration of the decision of the UMC Committee dated 12.10.2023. Their application was forwarded to the UMC Committee. Through its order dated 20.10.2023, the UMC Committee rejected the appellants’ application seeking therein reconsideration of its earlier decision. It is in these circumstances that the appellants knocked the doors of this Court challenging the cancellation of their MBBS 1st Professional Examination.

The appellants’ writ petition came up for hearing before a learned

Single Judge of this Court on November 1, 2023 on which date learned counsel for the University also put in appearance before the Court. The matter was adjourned to the next day when learned counsel for both the parties were heard and the appellants' writ petition was dismissed primarily on the ground that the learned Single Judge had himself and with the aid of the learned counsel appearing for the appellants, seen the relevant CCTV footage of the Biochemistry examination conducted on 17.02.2023.

5. Learned senior counsel for the appellants submits that prior to the cancellation of the appellants' MBBS 1st Professional Examination, the University had not afforded any reasonable opportunity to the appellants to defend themselves; through the show cause notice dated 11.10.2023 the University had granted the appellants less than 24 hours to respond; the aforesaid show cause notice did not contain any details of the irregularities the appellants were alleged to have committed; the material used against the appellants was also not put to them; thus, the impugned action of the University was violative of the University's own regulations which provided for grant of reasonable opportunity to the students before cancellation of their examination on the ground that they had indulged in unfair means; the impugned orders contained no reason as to on what basis the appellants' entire MBBS 1st Professional Examination was being cancelled especially when the allegations against the appellants were of having indulged in irregularities only while appearing in the examination of Biochemistry.

6. Per contra, learned counsel for the University submitted that prior to cancellation of the appellants' examination show cause notices were duly issued to them and during the course of the proceedings before the UMC Committee they were also shown portions of the relevant CCTV footage. Thus, before taking the

action impugned by the appellants, principles of natural justice were duly complied with and that the appellants having indulged in unfair means deserved to be dealt with sternly.

7. Learned counsel for the parties have been heard at length and with their able assistance the record of the case has also been perused.

8 Clause 7 of Ordinance 4 of the Calendar of the University reads as under: -

“7. If the Unfair Means adopted by a candidate come to the notice of the University after the Examination, his/her case will be decided by the Unfair Means Cases Committee on such evidence as may be available after giving the candidate reasonable opportunity to defend himself/herself.”

(emphasis supplied)

A perusal of the afore quoted clause of the Ordinance of the University clearly reveals that before a candidate can be punished for indulging in unfair means he/she is required to be provided a reasonable opportunity to defend himself/herself.

9. Even otherwise, before cancellation of examinations of candidates on the ground that they have indulged in unfair means, rules of *audi alteram partem* should be followed unless it is a case of mass copying or where the entire examination process is vitiated or where in the facts and circumstances of the case it is impracticable to hold any inquiry.

10. The present case is not a case of mass copying or where the entire examination process was vitiated. In the facts of the instant case it was also not impracticable to hold an inquiry. Therefore, before cancelling the appellants' MBBS 1st Professional Examination on the ground of them having indulged in unfair means rule of *audi alteram partem* was required to be followed. We shall now determine as to whether in the present case the said rule was followed.

11. On the basis of their merit secured by them in the NEET the

appellants were admitted to the MBBS course. After attending the requisite classes of the MBBS 1st Professional they appeared in the final examinations of the said course which took place from 09.02.2023 to 19.02.2023. On the declaration of the results they were declared “pass”. Resultantly, they were promoted to the MBBS 2nd Professional Course. However, on 11.10.2023 a letter was received by the Medical College from the University as per which a complaint had been lodged with the University by the Registrar of S.K.Ayush University, Kurukshetra that in the examination centre where the appellants had appeared for their Biochemistry examination on 17.02.2023 certain irregularities had been observed. Therefore, the appellants were directed to appear on the next day i.e. 12.10.2023 at 10:30 a.m. before the University’s UMC Committee. The principal of the Medical College was asked to serve a copy of the letter dated 11.10.2023 upon the appellants. A copy of the letter dated 11.10.2023 is reproduced below for ready reference: -

“..... In reference to the subject cited above, it is submitted that Shri Krishna Govt. Ayurvedic College, Kurukshetra was created an examination centre for conducting MBBS Ist Prof. Annual Examinations of your college students held from 09.02.2023 to 19.02.2023. A complaint was lodged by the Registrar, S.K. Ayush University, Kurukshetra with evident regarding irregularities observed at the centre on 17.02.2023.

Hence, as desired by the Standing Committee on Unfairmeans cases, following students may be directed to appear before the Standing Committee on Unfairmeans cases in its meeting scheduled to be held on 12.10.2023 at 10:30 AM. in the office of the Controller of Examinations, Pt. B. D. Sharma University of Health Sciences, Rohtak.

Sr.No.	Roll Nos.	Regn. No.	Student's Name	Father's Name
1	915706	21-AMCS-117	SARTHAK GUPTA	RAMESH KUMAR GUPTA
2	915707	21-AMCS-118	SATYAM PALIWAL	RAJESH PALIWAL
3	915712	21-AMCS-123	SHIKHA	PRADEEP KUMAR
4	915713	21-AMCS-124	SHIVAM	ANIL KUMAR
5	915714	21-AMCS-125	SHIVAM TANWAR	MANOJ KUMAR TANWAR
6	915719	21-AMCS-131	SHUBHANGINI	DEVENDERE CHAHAL
7	915724	21-AMCS-136	SAURAV ATRAY	RAMPAL
8	915725	21-AMCS-137	SRISHTEE BURA	SUDESH KUMAR

It would be highly appreciated if the acknowledgement obtained from the above students is supplied to the office.”

12. A perusal of the afore quoted letter dated 11.10.2023 addressed by the University to the Medical College reveals that the appellants were directed to appear on 12.10.2023 at 10:30 a.m. before the UMC Committee as a complaint had been lodged with the University by the Registrar, Shri Krishna

Govt. Ayurvedic College, Kurukshetra with regard to irregularities observed at the examination centre where the appellants took their examination of Biochemistry on 17.02.2023. No copy of the complaint was attached with the letter. No other evidence that the University possessed regarding the alleged irregularities was either mentioned or supplied. The appellants were also not granted a reasonable time to respond as the time gap between the receipt of the letter and the date and time of their appearance before the UMC Committee was much less than 24 hours.

13. Nonetheless, the appellants appeared before the UMC Committee on 12.10.2023 at 10:30 a.m. where they were shown CCTV footage of the examination centre where they had attempted their Biochemistry examination. On watching such footage they denied to have indulged in any irregularity while taking their Biochemistry examination on 17.02.2023. However, on 12.10.2023 itself the UMC Committee decided to cancel the appellants' entire MBBS 1st Professional Examination. The decision of the UMC Committee dated 12.10.2023, conveyed to the appellants through letter dated 17.10.2023, reads as under:-

“..... The Standing Committee on Unfairmean cases consider the cases of under mentioned candidates in its meeting held on 12.10.2023 and decided as under: -

Sr. No.	Roll No.	Name of Candidate	Subject	Regn. No.	College Name	Punishment/ Action to be taken
MBBS Ist Prof.						
1.	915706	SARTHAK GUPTA	Biochemistry	21-AMCS-117	Adesh Medical College & Hospital, Shahabad, Kurukshetra	Entire Examination Cancelled in which he/she appeared.
2.	915707	SATYAM PALIWAL		21-AMCS-118		
3.	915712	SHIKHA		21-AMCS-123		
4.	915713	SHIVAM		21-AMCS-124		
5.	915714	SHIVAM TANWAR		21-AMCS-125		
6.	915719	SHUBHANGINI		21-AMCS-131		
7.	915724	SAURAV ATRAY		21-AMCS-136		
8.	915725	SRISHTEE BURA		21-AMCS-137		

”

14. The afore quoted decision of the UMC Committee cancelling the appellants' entire MBBS 1st Professional Examination is in the form of a declaration. It does not reveal as to what proceedings took place on 12.10.2023

leading to the UMC Committee’s declaration. It is also bereft of any reason on which such declaration was based. The declaration also does not spell out as to why the appellants’ entire MBBS 1st Professional Examination had been cancelled when the alleged irregularities were only with regard to the examination held on 17.02.2023 in the subject of Biochemistry. The reasons to overrule the appellants’ denial of having committed any irregularity is also missing in the afore declaration.

15. Through filing of an application the appellants sought reconsideration of the University’s decision dated 12.10.2023 which application was also rejected by the UMC Committee through its order dated 20.10.2023 which letter/order is reproduced below:-

“.....The Standing Committee on Unfairmeans cases re-considered the cases of under mentioned candidates in its meeting held on 20.10.2023 and decided as under: -

Sr. No.	Roll No.	Name of Candidate	Subject	Regn. No.	College Name	Punishment/ Action to be taken
MBBS Ist Prof.						
1.	915706	SARTHAK GUPTA	Biochemistry	21-AMCS-117	Adesh Medical College & Hospital, Shahabad, Kurukshetra	Previous decision stands i.e., Entire Examination Cancelled in which he/she appeared.
2.	915707	SATYAM PALIWAL		21-AMCS-118		
3.	915712	SHIKHA		21-AMCS-123		
4.	915713	SHIVAM		21-AMCS-124		
5.	915714	SHIVAM TANWAR		21-AMCS-125		
6.	915719	SHUBHANGINI		21-AMCS-131		
7.	915724	SAURAV ATRAY		21-AMCS-136		
8.	915725	SRISHTEE BURA		21-AMCS-137		

”

The afore quoted order also does not reveal any reasons. In fact in the same none of the grounds taken by the appellants in their application have even been referred to.

16. Thus, before cancelling the appellants’ entire MBBS Ist Professional Examination they were neither given a copy of the complaint which formed the basis of the show cause notice issued to them nor were they supplied any details of the irregularities that they had allegedly committed while taking their Biochemistry Examination on 17.02.2023. They were not given adequate time to respond to the show cause notice served upon them as also not informed about the

evidence that the University possessed and ultimately used against them.

17. In view of the above, we unhesitantly conclude that before cancellation of their entire MBBS Ist Professional Examination the appellants were not granted reasonable opportunity to defend themselves which violates not only Clause 7 of Ordinance 4 of the University's Calendar but also the rule of *audi alteram partem*.

18. The impugned decisions of the University are also flawed for being bereft of any reason. In fact the decision of the University to cancel the appellants' examination is in the form of a declaration. The orders of the University which have been impugned by the appellants would affect them for their entire academic life. Non-supplying of reasons for such decisions is legally unacceptable. After the order regarding cancellation of their examination had been conveyed to the appellants they filed an application for reconsideration of the said order by the UMC Committee. Their application contained several grounds. The UMC Committee rejected the appellants' application but without even touching any of the grounds raised by the appellants.

19. The learned Single Judge primarily based his decision on having himself watched the CCTV footage with the aid of learned counsel for the appellants. The relevant paragraph of the impugned judgment reads as under :-

"24. This Court having watched the CCTV footage, after associating Mr. Vidul Kapoor, Advocate, who is the briefing counsel to Mr. Ashwani Chopra, learned Sr. Advocate being present in Court throughout the proceedings and even he also could not deny the fact that the faces of all the students including the petitioners can be very well identified and it is by any stretch can't be accepted that the petitioners, when countered by the Standing Committee on unfair means with the said CCTV footage, were not able to identify themselves. Inference is obviously against the petitioners on this account as well, who have made an attempt to build up a defence, which does not hold good at all before this Court."

Even if in the CCTV footage faces of all the students were easily identifiable the exact role, if any, of each of the appellants was required to be determined by the authorities after following the due process of law.

20. In the light of the above discussion, the impugned judgment is set aside. Resultantly, the orders impugned by the appellants in their writ petition filed before learned Single Judge are quashed. However, liberty is granted to the University to proceed against the appellants for the irregularities allegedly committed by them but only after affording them a reasonable opportunity as also by passing a reasoned final order, in accordance with law. The needful be done within one month from the date of receipt of a copy of this order.

[DEEPAK SIBAL]
JUDGE

15.11.2023
shamsher

[SUKHVINDER KAUR]
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No