



2024 : DHC : 753



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5425/2023**
VINOD KUMAR YADAV Petitioner

Through: Mr. Rajat Wadhwa, Ms. Shreti
Bhatia and Mr. Gurpreet Singh, Advocates

versus

**CENTRAL BOARD OF SECONDARY
EDUCATION AND ANR** Respondents

Through: Mr. Atul Kumar and Ms. Aditi
Gutpa, Advocates for R-1
Mr. Sanjay Khanna, Standing Counsel with
Ms. Pragya Bhushan, Mr. Karandeep Singh
and Mr. Tarandeep Singh, Advocates for R-
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CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)
01.02.2024

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1. The petitioner, as a student of the B.Sc. (OT) course conducted by Sanjay Gandhi Postgraduate Institute (SGPGI), Lucknow appeared for the All India Pre-Medical/Pre-Dental Test (AIPMT/PDT-NEET) Examination held on 3 May 2015.

2. On 16 July 2015, the Central Board of Secondary Education (CBSE), which was conducting the (AIPMT-NEET) examination at



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that point of time, wrote to the petitioner, stating that, as he was found by the Haryana Police to be indulging in unfair means to gain an unfair advantage over other candidates during the conduct of the AIMPT/PDT on 3 May 2015, he was awarded the punishment of permanent debarment from appearing in the AIMPT/PDT under Rule 14.2(2) read with Rule 14.2(1) of the Information Bulletin of the CBSE applicable to the AIPMT/PDT held in 2015.

3. The counter-affidavit filed by the CBSE in the present case reveals that this decision was taken consequent on a communication dated 29 June 2015 received from the Superintendent of Police, Rohtak, Haryana, informing the CBSE that 23 candidates, who had appeared in the AIMPT/PDT-2015 had been identified as beneficiaries of unfair means employed in the said examination. The name of the petitioner, along with his father's name and address, figures at Serial No.11 of the said list of 23 candidates.

4. The short issue before this Court is whether the order of debarment can sustain in law.

5. Before addressing the issue, two developments in the aforementioned criminal proceedings require to be noted.

6. The first is that the investigations conducted by the Haryana Police culminated in the filing, by the Haryana Police, of the chargesheet dated 8 October 2015 before the learned Trial Court at Rohtak. As Mr. Rajat Wadhwa correctly points out, the name of the petitioner does not figure in the list of accused named in the



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chargesheet though it makes a reference to one “Vinod @ Honey”.

7. Mr. Wadhwa points out that the said “Vinod @ Honey” is identified in the chargesheet, as the son of Sumundr, who is a resident of Rohtak. It is, therefore, *prima facie* apparent that Vinod @ Honey is not the petitioner.

8. The name of the petitioner, therefore, does not figure in the chargesheet which ultimately came to be filed by the Haryana Police Authorities before the concerned Trial Court. Mr. Wadhwa submits, on instructions, that in fact his client’s name does not figure in any charge-sheet which has been filed, consequent on the investigations to which the letter dated 29 June 2015 *supra* refers, in connection with the use of unfair means in the AIMPT/PDT-2015.

9. The second development with respect to the said investigation was brought to my attention by Mr. Atul Kumar, learned counsel for the CBSE. The matter relating to the use of unfair means in the AIPMT/PDT-2015 travelled to the Supreme Court, which passed a detailed judgment in that regard on 15 June 2015. The Supreme Court, in the said judgment, referred to various status reports submitted to it by the Investigating Agency. These include a status report dated 2 June 2015, which reads thus :

“7. That accused Vijay Yadav further disclosed that on 02/3.5.2015, he went to Shakti Resort at Behror, Rajasthan by private bus (which was arranged by main accused Roop Singh Dangi). He also admitted that he met the said Veer Bahadur at Shakti Resort, Behror, Rajasthan where Roop Singh Dangi was already present who provided them new mobile phones and SIM cards. He further



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disclosed that Roop Singh Dangi had leaked the AIPMT question papers and supplied the answer keys with the help of master solvers. *He further stated that the solved answer keys were supplied to the candidates namely Vinod, Sneh, Nanah and Sujit during the examination hours through mobile phone from Behror, Rajasthan.* He was produced before the Id. Area Magistrate, Rohtak on 02.6.2015, which granted three days police remand. Further interrogation is going on.

It is further submitted that, in reference to the DO letters written by the answering respondent to the SPs concerned regarding verification of 260 suspected mobile numbers, report of 50 mobile numbers/SIM cards have been received till date. Out of these 50 mobile numbers, 22 mobile numbers/SIM cards were found to be registered on fake identities.”

(Emphasis supplied)

10. Mr. Atul Kumar’s submission is that the petitioner stands named in the afore-extracted paragraph from the status report dated 2 June 2015 filed by the Investigating Agency before the Supreme Court.

11. *Per contra*, Mr. Wadhwa submits that the candidate named in the said paragraph is only Vinod and not his client and that, as there was another Vinod i.e. Vinod @ Honey, who ultimately came to be arrayed as an accused in the chargesheet, it cannot be said conclusively that the reference of Vinod in para 7 of the status report dated 2 June 2015 was a reference to his client.

12. It is also relevant to note that, with effect from 2019, the AIPMT/PDT is being conducted by the NTA and not by the CBSE.

13. The petitioner had filled up the form for NEET 2023, which is the successor examination of the AIPMT/PDT-NEET which was



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earlier being held. This Court, by order dated 2 May 2023, permitted the petitioner to appear in the NEET examination to be conducted on 7 May 2023 subject to the outcome of the writ petition. Mr. Khanna submits that the petitioner did not, however, appear and was marked absent. Mr. Wadhwa seeks to explain this by stating that the petitioner had hardly any time to prepare for the paper as there were just five days left after the order dated 2 May 2023 was passed and the paper was a Pre-Medical Test which required preparation.

14. Having heard Mr. Rajat Wadhwa, learned counsel for the petitioner, Mr. Atul Kumar, learned counsel for the CBSE and Mr. Sanjay Khanna, learned counsel for the National Testing Agency (NTA), I have applied my mind to the concerned provisions of the Information Bulletin, under which the impugned action was taken.

15. Rules 14.2(1) and 14.2(2) of the Information Bulletin, applicable to the AIMPT/PDT-2015, under which the impugned action was taken, read thus:

“14.2 Unfair Means and Breaches of Examination Rules:

(1) Unfair means practice is an activity that allows a candidate to gain an unfair advantage over other candidates. It includes, but not limited to:

- a) Having in possession papers, books, notes, electronic devices or any other material or information relevant to the examination in the paper concerned;
- b) Paying someone to write examination (impersonation) or prepare material;
- c) Breaching examination rules;
- d) Assisting another candidate to engage in malpractice; giving or receiving assistance directly



or indirectly of any kind or attempting to do so;

- e) Writing questions or answers on any material other than the answer sheet given by the Centre Superintendent for writing answers;
- f) Tearing of Answer Sheet, any page of the test booklet, etc.;
- g) Contacting or communicating or trying to do so with any person, other than the Examination Staff, during the examination time in the examination centre;
- h) Taking away the answer sheet out of the examination hall/room;
- i) Smuggling out Question Paper or its part or smuggling out answer sheet or part thereof;
- j) Threatening any of the officials connected with the conduct of the examination or threatening any of the candidates;
- k) *Using or attempting to use any other undesirable method or means in connection with the examination.*
- l) Manipulation & fabrication in online documents viz. admit card, rank letter, etc.
- m) Forceful entry in Examination Hall with mala fide intentions.
- n) Affixing of fabricated photograph on the application form.

(2) Punishment for using Unfair Means/Practice

During the course of examination, before or later on, if a candidate is found indulged in any of the above or similar practices, shall be deemed to have used unfair practices at examination and marked as UNFAIRMEANS (U.F.M.). Such candidates would be debarred from taking this examination permanently in future and shall also be liable for criminal action and /or any other action as deem fit by the Board.”

16. There can be little manner of doubt that, if unfair means were adopted by one or more candidates in the examination, all beneficiaries of the said unfair means would be equally culpable. Clause 14.2(2) envisages permanent debarment from writing the



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AIPMT/PDT-NEET (now the NEET) “if a candidate is found indulged (*sic* indulging) in any of the above or similar practices”, “during the course of examination before or later on”. Clause 14.2(1)(k) includes, among the practices which are regarded as unfair means allowing a candidate to gain an unfair advantage over other candidates, “using or attempting to use any other undesirable method or means in connection with the examination”. As Mr. Atul Kumar correctly submits, this clause is extremely wide and is compendious enough to include any form of unfair means adopted in the examination.

17. There can also be no doubt that, under this clause, the person adopting unfair means as well as the beneficiary of such adoption of unfair means would be equally covered.

18. That said, the punishment of debarment would apply only to a candidate who is “found” indulging in any of the above or similar practices.

19. I have deliberated to some extent on the exact contours of the expression “found”, as used in Clause 14.2(2).

20. One extreme view that could be taken is that the word “found” would require a finding akin to a finding in judicial or quasi-judicial proceedings, which would require conclusive determination of guilt. That, however, may not be an appropriate understanding of the expression “found”, when used in the context in which it used in Section 14.2(2), especially given the purpose of the provision.



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Following the judgments of the Supreme Court in *Shailesh Dhairyawan v. Mohan Balkrishna Lulla*¹ and *Richa Mishra v. State of Chhattisgarh*², it is now settled that the primacy earlier enjoyed by the requirement of literal interpretation of a statute has given way substantially to the principle of purposive interpretation as the golden rule to interpret statutory provisions.

21. The purpose of Clause 14.2(2) is, unquestionably, to maintain the sanctity and purity of the examination process, and ensure that all candidates have a level playing field. The word “found” has, therefore, to be interpreted keeping this purpose in mind, so as to ensure that any possibility of anything amiss in the examination process is sedulously avoided. It cannot, therefore, be accorded an unduly strict construction. Applying a purposive interpretation, even if a candidate is suspected of using unfair means, provided the suspicion is not merely speculative but is real, justifiable and based on *prima facie* material, he can be treated as having been “found” to have used unfair means.

22. Had, for example, therefore, the petitioner been named in the chargesheet which was filed by the Haryana Police before the learned Trial Court at Rohtak, no case for interference may have existed at this stage, as that would amount at least to a *prima facie* finding of guilt, even if the trial were ultimately to result in acquittal.

23. As things transpired, however, that the petitioner is decidedly

¹ (2016) 3 SCC 619

² (2016) 4 SCC 179



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not one of the accused arrayed in the charge-sheet. In so far as the report dated 2 June 2015 filed by the Investigating Agency before the Supreme Court is concerned, Mr. Wadhwa correctly points out that it cannot be said conclusively that the reference to “Vinod” in the said report is a reference to the petitioner.

24. In these circumstances, the CBSE could not have straightaway debarred the petitioner in exercise of the power conferred by Section 14.2(2) of the Information Bulletin without at least an independent inquiry at its end, resulting in a finding that the petitioner had indulged in unfair means. Of course, the standard of such inquiry would not be as rigid as the standard which would apply to criminal proceedings and the CBSE would be at liberty to proceed on the basis of preponderance of probability. The petitioner ought, however, to have been extended a chance to provide an explanation before an order of permanent debarment was passed against him, in the facts of the present case.

25. As the outcome of these proceedings may have an impact on the petitioner’s right to apply for and appear in the NEET 2024 examination, I deem it appropriate to pass time-bound directions.

26. As such, this writ petition is disposed of, in the following terms:

(i) The impugned notice dated 16 July 2015 passed by the CBSE is quashed and set aside.

(ii) The CBSE is directed to reconsider the issue of



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debarment of the petitioner from writing the AIMPT/PDT (presently the NEET).

(iii) Mr. Atul Kumar undertakes to inform Mr. Rajat Wadhwa, learned counsel for the petitioner, of the officer before whom the petitioner would have to appear for reconsideration of the impugned decision. The petitioner would appear before the concerned officer on 12 February 2024. He would be offered an opportunity of hearing before any view is taken.

(iv) Let a *de novo* decision be taken within a period of four weeks of the said date and communicated to the petitioner.

(v) Needless to say, should the petitioner continue to remain aggrieved by the said decision, his remedies as are available in law would remain reserved.

27. I may note here that Mr. Atul Kumar, learned counsel for the CBSE, had raised as a preliminary objection, the contention that this writ petition is hit by delay and laches as the petitioner had come to know as far back as in 2015 that his name was not in the list of accused in the chargesheet filed before the Criminal Court, he has nonetheless waited for over seven years to approach this Court.

28. The writ petition points out that the petitioner is a resident of Eastern UP and is straitened financial circumstances. Besides the fact that the petitioner's academic career is at stake, and this order is only



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directing CBSE to take a fresh look in the matter, I do not deem it appropriate in the interests of justice to non suit the petitioner on the ground of delay.

29. The petition stands disposed of in the aforesaid terms with no orders as to costs.

30. *Dasti.*

C.HARI SHANKAR, J

FEBRUARY 1, 2024

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Click here to check corrigendum, if any