HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 10906/2018

Naveen Yadav Aged about 26 years Son Of Shri Subhash Chand Yadav, R/o Vpo Anantpura Tehsil Behror, District Alwar.

----Petitioner

Versus

1. Rajasthan University Of Health Sciences Through Its Registrar, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur-302033
2. The Convener, Rpmt-2009 Through Registrar, Rajasthan University Of Health Sciences, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur-302033
3. Mahatma Gandhi Medical College, Jaipur.

----Respondents

Connected With

S.B. Civil Writ Petition No. 10908/2018

Ravikant Nirwan Aged about 30 years Son Of Shri Onkar Mal, Resident Of Ward No.4, Near Sanskrit School, Swami Mohalla PO Taranagar, District Churu.

----Petitioner

Versus

1. Rajasthan University Of Health Sciences Through Its Registrar, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur-302033
2. Pr. Secretary, Medical Education, Government Of Rajasthan, Secretariat, Jaipur.
3. Principal, College Of Veterinary And Animal Science, Bikaner.

----Respondents

S.B. Civil Writ Petition No. 10904/2018

Bhupendra Pratap Singh Rathore Son Of Shri Gopal Singh Rathore, Aged about 28 years Resident Of 22, Sainik Colony, Nagaur, Rajasthan

----Petitioner

Versus

1. Rajasthan University Of Health Sciences Through Its Registrar, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur-302033
2. The Convener, Rpmt-2009, Through Registrar, Rajasthan University Of Health Sciences, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur-302003.
3. Mahatma Gandhi Medical College, Jaipur.

----Respondents

S.B. Civil Writ Petition No. 10905/2018

Nishant Mahar Son Of Dr. Shri M.s. Mahar, Resident Of C-18-E Mig Mayapuri, New Delhi.

----Petitioner

Versus

1. Rajasthan University Of Health Sciences Through Its Registrar, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur-302033
2. The Principal Secretary, Government Of Rajasthan, Department Of Medical Education, Secretariat, Jaipur.
3. Principal, Jln Medical College, Ajmer.

----Respondents

S.B. Civil Writ Petition No. 10907/2018

Prashant Mahar Son Of Dr. Shri M.s. Mahar, Aged about 26 years Resident Of C-18-E, Mig Mayapuri, New Delhhi.

----Petitioner

Versus

1. Rajasthan University Of Health Sciences Through Its Registrar, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur-302033
2. The Principal Secretary, Government Of Rajasthan, Department Of Medical Education, Secretariat, Jaipur.
3. Principal, Sms Medical College, Jaipur.

----Respondents

S.B. Civil Writ Petition No. 10909/2018

Dharmendra Ola Son Of Shri Sube Singh Ola, Aged about 27 years Resident Of Shanti Nagar, Rajgarh Road, Pilani.

----Petitioner

Versus

1. Rajasthan University Of Health Sciences Through Its Registrar, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur-302033.
2. The Principal Secretary, Medical Education, Government Of Rajasthan, Secretariat, Jaipur.
3. Principal, College Of Veterinary And Animal Sciences, Bikaner.

----Respondents

S.B. Civil Writ Petition No. 10910/2018

Nikita Chauhan Daughter Of Mr. Jugal Chauhan, Aged about 28 years Resident Of A-259, Vidyut Nagar, Ajmer Road, Jaipur Rajasthan

----Petitioner

Versus

1. Rajasthan University Of Health Sciences Through Its Registrar, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur-302033
2. The Convener, Rpmt-2009 Through Registrar, Rajasthan University Of Health Sciences, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur-302033
3. Mahatma Gandhi Medical College, Jaipur

----Respondents

S.B. Civil Writ Petition No. 10911/2018

Chandra Shekhar Meena Son Of Shri Ram Prasad Meena, Aged about 30 years Resident Of House No.573, Gate No.7, Rajat Garh Colony, Nainwan Road Bundi

----Petitioner

Versus

1. Rajasthan University Of Health Sciences Through Its Registrar, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur-302033
2. The Convener, Rpmt-2009 Through Registrar, Rajasthan University Of Health Sciences, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur-302033

3. Mahatma Gandhi Medical College, Jaipur.

----Respondents

S.B. Civil Writ Petition No. 13438/2018

Om Prakash Paliwal S/o Shri Kanhaiya Lal Paliwal, Aged about 27 years Resident Of Village Sakroda, Tehsil Mavli, District Udaipur, Rajasthan.

----Petitioner

Versus

1. Rajasthan University Of Health Sciences Through Registrar, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur, Rajasthan.
2. The Controller Of Examination, Through Registrar, Rajasthan University Of Health Sciences, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road Jaipur, Rajasthan.
3. Ravindra Nath Taigor Medical Collage, Udaipur.

----Respondents

For Petitioner(s)	:	Mr.AK Sharma, Sr.Adv. assisted by Mr.Sandeep Singh Shekhawat Mr.Akshay Dutt Sharma Mr.Rinesh Gupta
For Respondent(s)	:	Mr.Rajendra Prasad, Advocate General with Ms.Dhriti Laddha – for State Mr.MA Khan with Ms. Rekha Jain & Ms.Shama Khan – for RUHS Mr.Saransh Saini Mr.Arnav Singh for Mr.Sandeep Pathak Mr.Nikhil Saini - for RUHS Mr.Rachit Sharma – for RUHS Mr.Yash Joshi – for RUHS

HON'BLE MR. JUSTICE SAMEER JAIN

Judgment

Reserved On :: 14/11/2024

Pronounced on :: 3/12/2024

R E P O R T A B L E :

1. Considering the interwoven controversy, identical factual narrative and with the consent of the concerned counsel, the instant petitions were clubbed together and are hence adjudicated

by this common judgment. **S.B. Civil Writ Petition No. 10906/2018** titled as **Naveen Yadav Vs. Rajasthan University of Health Science and Ors.** is taken as the lead petition. It is made clear that the instant judgment shall be made applicable of *mutatis mutandis* basis on instant batch of petitions.

2. The lead petition is filed with the following prayers:

> *"i) The impugned order dated 17.11.2017 (Annex.13) may kindly be quashed and set aside and the petitioner may kindly be declared entitled prosecute the studies for the future course of studies of MBBS course and in case the petitioner completes this MBBS Course successfully he may be awarded degree thereof.*
>
> *ii) Any consequential order passed against the petitioner be quashed and set aside."*

3. Considering the checkered history, prolonged time-line and for the sake of convenience, the petitions filed by the petitioners or the similarly situated persons insofar for the said subject matter/dispute are tabulated herein below:

Title and credentials of the petition	**Observation**
S.B. Civil Writ Petition No. 9952/2009 titled as Jhabar Singh Vs. State of Rajasthan and Ors.	Vide order dated 31.03.2011 directions to cancel the admission of 16 candidates/students and lodging of an F.I.R.
S.B. Civil Writ Petition No. 7248/2011 titled as Bhupendra Pratap Singh Rathore Vs. Rajasthan University of Health Science and	Vide order dated 31.05.2011 directions for cancellation of the admission of the

ors.	petitioners and similarly situated persons was stayed.
D.B. Special Appeal (Writ) No. 595/2014 titled as Bhupendra Pratap Singh Rathore Vs. Rajasthan University of Health Science and ors.	Dismissed vide order dated 25.04.2014.
D.B. Civil Review Petition No. 133/2016 titled as Bhupendra Pratap Singh Rathore Vs. Rajasthan University of Health Science and ors.	Allowed vide order dated 17.09.2016 and order dated 25.04.2014 was recalled and modified.
S.B. Civil Review Petition No. 222/2016 titled as Bhupendra Pratap Singh Rathore Vs. Rajasthan University of Health Science and ors.	Vide order dated 07.12.2016 the plea of review was rejected.
D.B. Special Appeal (Writ) No. 385/2017 titled as Om Prakash Paliwal & Ors. Vs. Rajasthan University of Health Science and Ors.	Vide *ex parte* order dated 30.05.2017, the said appeal was disposed of.

FACTUAL BACKGROUND/TIME-LINE OF LITIGATION

4. The instant petitions are filed assailing the impugned order dated 17.11.2017 whereby the respondent-RUHS had cancelled the admission(s) granted to the petitioner(s), in the MBBS course on account of the offence of cheating by impersonation in the Rajasthan Pre-Medical Test, 2009.

5. The petitioner(s) appeared in the Rajasthan Pre-Medical Test, 2009 (hereinafter referred to as RPMT) and were declared successful. Resultantly, the petitioner(s) were allotted with the Medical Colleges as per the rank scored by them. Subsequently, in the year 2011, whilst the petitioner(s) were pursuing the said course, a news was published wherein, it was stated that a judgment was passed by the Court on the basis of a police report whereby, 16 students who have committed the offence of cheating by impersonation in the RPMT, 2009, were named.

6. Therefore, vide judgment dated 31.03.2011 passed in **S.B. Civil Writ Petition No. 9952/2009** titled as **Jhabar Singh Vs. State of Rajasthan and Ors.** the admission of the said 16 students was cancelled. Subsequently, vide order dated 20.04.2011 show cause notices were issued to the petitioners qua which the petitioners therein furnished a reply on 30.04.2011. Consequentially, vide order dated 12.05.2011 passed by the respondent-RUHS whilst following the principles of natural justice, a direction to cancel the admission so granted to the petitioners therein was passed.

7. Being aggrieved of the order dated 12.05.2011 the petitioner(s) filed **S.B. Civil Writ Petition No. 7248/2011** titled as **Bhupendra Pratap Singh Rathore Vs. Rajasthan University of Health Science and ors.** wherein vide order dated 31.05.2011 the Court had granted an interim protection in favor of the petitioner(s) therein and granted provisional permission to continue the studies under the said course. The relevant extract from the said judgment is reproduced herein below:

"In view of the discussion made above, these writ petitions are disposed of with the following directions:-
(i) The respondents are directed to get report from any of the directed to get report from any of the following agencies which are as under -
(a) Central forensic Science Laboratory (CBI) New Delhi
(b) Forensic Science Laboratory, Government of National Capital Territory of Delhi, Sector 14, Rohini, Delhi – 110085
(c) Central Forensic Sciences Laboratory, Osmania Institutional Area, Hyderabad.

To seek report regarding allegation of cheating by impersonation, the entire material would be sent by the respondent university to any of the agencies named above and to have proper monitoring and coordination, the IG crime bureau, Rajasthan, Jaipur is directed to act as a coordinator for the aforesaid purpose if the record exist in the court of elsewhere, it may be obtained.

(ii) The respondent Rajasthan University of Health Science will cooperate with I.G. crime bureau Rajasthan, Jaipur to get report at the earliest the report may be submitted by the agency to whom it is assigned, within a period of three months from the date of receipt of the material documents. The agency to whom work is assigned will examine the material and given its independent report after examining thump impression, signature and hand writing of the petitioner to record their finding as to whether they indulge in cheating by impersonation or not.

(iii) If report comes adverse to the petitioners them impugned order would become effective and thereby admission would be treated as cancelled if report comes favorable then impugned order would have no effect rather to be treated as set aside.

(iv) The respondent University is directed to send copy of the inquiry report of P.K. Singh committee to forensic science laboratory concerned to see the areas of examination however it would not mean that inquiry report should be relied. The P.K. Singh committee

report would be given only for their convenience to find out the area of examination."

(Emphasis laid)

8. Assailing the order dated 31.05.2011, **D.B. Special Appeal (Writ) No. 595/2014** titled as **Bhupendra Pratap Singh Rathore Vs. Rajasthan University of Health Science and ors.** was preferred and vide judgment dated 25.04.2014 the said appeal was dismissed. The relevant portion of the said judgment is reproduced herein below:

"For the reasons mentioned above, the arguments raised by the counsel for the appellants do not hold ground and the appeals filed have no force. By the impugned order, the writ petitions have been disposed of with certain directions for tests by scientific Laboratory only. On receipt of the report, in furtherance of the direction, would only show as to whether it is prejudicial to the appellants or not. The challenge made today to the order passed by learned Single Judge is only on the basis of apprehension of the appellants."

(Emphasis laid)

9. Thereafter, the judgment debtors therein preferred **D.B. Civil Review Petition No. 133/2016** titled as **Bhupendra Pratap Singh Rathore Vs. Rajasthan University of Health Science and ors.** Vide judgment dated 17.09.2016 the order dated 25.04.2014 (passed in SAW against SB order) was recalled and modified. The relevant extract of the said judgment is reproduced herein below:

"Consequently all the special appeals are disposed of with liberty to the appellants to file their review petitions before the ld. Single judge, if so advised and as regard review petitioners are concerned, their

review petitions are allowed and the order of Division Bench passed in the batch of appeals dt. 25.01.2014 is recalled and their special appeals are restored to the original number and disposed of by the present order with liberty to file review petition before the ld. Single judge, if so advised with an expectation of early disposal."

(Emphasis laid)

10. Availing the liberty granted in the said judgment, the petitioners therein filed **S.B. Civil Review Petition No. 222/2016** titled as **Bhupendra Pratap Singh Rathore Vs. Rajasthan University of Health Science and ors.** The said review petition was dismissed vide judgment dated 07.12.2016. the relevant extract of the said judgment is reproduced herein below:

"In the background aforesaid, I am unable to review the order ought on the ground that consent was not given for sending the case to the Forensic Science Laboratory to get independent opinion, whereas, consent was given. ***If somebody has indulged in impersonation, should suffer the consequences and for it, even the court could have passed an order to seek a report.*** *The hyper technicalities should not come in the way for administration of justice, otherwise despite of report adverse to the petitioners, if direction is given to continue them in the course and not to subject them with criminal case, then it would mean that despite of adverse report and case of impersonation, the court has saved some one on hyper technicalities defeating the administration of justice. In view of the above, I find no merit in the review petition."*

(Emphasis laid)

11. The judgment dated 07.12.2016 was assailed by the petitioners therein, by preferring **D.B. Special Appeal (Writ) No. 385/2017** titled as **Om Prakash Paliwal & Ors. Vs. Rajasthan University of Health Science and Ors.** Vide the *ex*

parte order dated 30.05.2017 (without issuing notices) the said appeal was disposed of. The relevant extract from the said judgment is reproduced herein below:

> *"5. In our considered opinion, in view of the earlier decision in 2014, the original order cannot be challenged and therefore, we have not expressed any opinion on merits of the matter in review.* ***The observations which are made by the learned Single Judge are very clear that he has taken the consent for reaching the conclusion but that laid to irreparable loss to the appellant.***
>
> *6. In that view of the matter, without issuing notice, we clarify as under:-*
>
> *i) Assuming without admitting that consent was taken, the parties cannot be put to a fix which takes away the right which has accrued right to challenge the order.*
>
> *ii) In that view of matter, even if consent is given, it will be open for the appellant to challenge the report of Forensic Science Laboratory by way of appropriate proceedings.*
>
> *7. In case of success in that proceedings, it will be also open to challenge the consequential order passed after the clarification.*
>
> *8. With the above clarification, the appeals stand disposed of."*
>
> *(Emphasis laid)*

SUBMISSIONS BY THE PETITIONER(S)

12. In the backdrop, learned senior counsel representing the petitioner(s) had submitted that in violation of the aforementioned judgments the respondent-RUHS issued the impugned order dated 17.11.2017, cancelling the admission of the petitioner(s) for the reason that the petitioner(s) have committed an offence of cheating by impersonation in the RPMT, 2009. It was further

contended that the said order was issued violating the basic principle of *audi alteram partem* and the other principles of natural justice.

13. Learned counsel had further averred that the FSL report dated 26.02.2015 was furnished in a cursory manner, without tendering reasonable justification and following the principles of the Indian Evidence Act and the Code of Criminal Procedure. Moreover, as per the Ordinance 152 (3) of the Rules for dealing with cases of unfair-means and disorderly conduct at the University Examinations, the competent and appropriate authority to debar/cancel the candidature/studentship of the petitioner(s) from the said course would be the Syndicate and not the Registrar. Hence, it can be deduced that the impugned order is passed by an incompetent authority and has no legal sanctity.

14. Learned counsel had further appraised the Court qua the fact that till date no conviction order is passed against the petitioner(s) or similarly situated persons. Therefore, the respondent-RUHS have committed a grave error whilst passing of the said impugned order.

15. Successively, learned counsel had averred that the differentiated signatures and thumb impressions cannot be made the sole basis for cancelling the admissions of the petitioner(s), especially when the petitioner(s) as on date have attained much age and their signatures and thumb-impressions cannot be co-related with that marked on the OMR Sheets of the said examination, after lapse of years.

16. Learned counsel had further relied upon the provisions enshrined under the Indian Evidence Act and have averred that it is a settled position of law that the opinion of the experts falls under the category of corroborative evidences and the same ought not be considered as a substantial piece of evidence or a conclusive proof. Moreover, the said FSL report was furnished in the year 2015 and the alleged offence pertains to the year 2009. Therefore, the same is barred by the doctrine of delay and laches.

17. Learned counsel appearing on behalf of the petitioner(s) had further contended that as on date the petitioner(s) have already completed their MBBS course, handful of the petitioners have even enrolled themselves for higher studies/attaining specializations and some of the petitioners are rendering services as Medical Officers, not only in the state of Rajasthan but also in other states as that of Maharashtra. Consequential to their completion of the degrees, the petitioner(s) have not only invested their youth age in the said profession, but also have responsibilities of their families on them.

18. In support of the contentions made insofar, learned senior counsel had placed reliance upon the ratios encapsulated in **Board of High School & Intermediate Education, U.P. Allahabad Vs. Ghanshyam Das Gupta & Ors.** reported in **AIR 1962 SC 1110; Basheera Begam Vs. Mohammed Ibrahim & Ors.** reported in **2020 (11) SCC 174**; **Yograni Vs. State by the Inspector of Police - Criminal Appeal No.477/2017** decided on **23rd September, 2024; Rajendra Prasad Mathur & Ors. Vs. Karnataka University & Ors.** reported in **1986 (Supp) SCC**

740; Saraswati Educational Charitable Trust & Anr. Vs. Union of India & Ors. - Writ Petition (C) No.40/2018 decided on **24th February, 2021; Miss Luban Shoukat Mujawar Vs. State of Maharashtra & Ors. - Writ Petition No.132/2017** along with other connected writ petition decided by Bombay High Court vide order dated **09th May, 2024.**

SUBMISSIONS MADE BY RESPONDENTS

19. Converse to the contentions made up till now, learned counsel representing the respondents have submitted that the instant petitions are filed seeking directions from the Court for quashing of the order dated 17.11.2017 which is a consequential communication of the erstwhile communications made to the petitioner(s) for the same subject matter. Nevertheless, the petitioner(s) have not challenged the report of P.K. Singh Committee and the erstwhile orders passed by the respondent-RUHS. Thence, the said prayer has no significance and the instant petitions are not tenable.

20. Learned counsel have further averred that the instant petitions are barred by the doctrine of *res judicata*, as the same parties were involved in the erstwhile litigations against the same subject matter and *lis* in question. It was further averred that vide order dated 20.04.2011 show cause notices were issued in the foremost round of litigation i.e. in **S.B. Civil Writ Petition No. 9952/2009 (Supra),** and subsequently the petitioner(s) on 30.04.2011 have submitted their reply with respect to the said show cause notices. Therefore, at this belated juncture, the

petitioner(s) cannot claim that the respondents have not tendered a reasonable opportunity to the petitioner(s) to substantiate their averments.

21. Learned counsel had further contended that the medical profession and the study of medical science is a noble profession/professional course and the same is governed by certain set of ethics, codes, principles and high moral values along with extraordinary knowledge, as the same deals with human lives directly. It was further submitted that the said allocation of seats and continuation of the course is strictly carried in compliance with the directions of the National Medical Council or Indian Medical Council, in a transparent and unbiased manner.

22. Moreover, if once the candidature of the petitioner(s) or persons similarly situated as that of the petitioner(s) is vitiated/ withdrawn/cancelled due to certain malpractices & unfair practices adopted by them; fraud committed by them; misrepresentation and impersonation so conducted, zilch equity can be drawn in favor of such persons/candidates/students.

23. Nonetheless, if such benefits are extended to the accused-petitioner(s), the rights of the candidates/students who have attempted the said examination in a fair, legal and disciplined manner shall be maltreated. Withal, the offence committed by the petitioners ought not to be considered as an easy gate-way to the examinations of public importance.

24. Learned counsel had time and again pressed upon a fact that the said order dated 17.11.2017 is a consequential communication of the erstwhile order(s) issued by the respondent-

RUHS and the same were issued in compliance of the Court orders, following the principle of natural justice. It was further contended that the petitioner(s) are barred by the doctrine of estoppel, as the learned Court whilst adjudicating the S.B. Review Petition have categorically opined that the appointment of the P.K. Singh Committee was at the behest of the petitioner(s) therein and henceforth the results/report released by the said committee cannot be subsequently denied.

25. Whilst placing reliance upon the judgment dated 30.05.2017 passed in **D.B. Special Appeal (Writ) No. 385/2017 (supra)** it was averred that the Court whilst adjudicating the said matter had not jot down any opinions upon the merits/demerits of the matter and had fairly maintained the judgment formulated by the Single Bench Judge qua the fact of passing of the consent order.

26. Likewise, the Division Bench in the Review Petition also made a limited observation qua the clarification of the fact that appropriate proceedings can be chosen by the petitioners/applicants therein against the FSL report, if they feel aggrieved and any consequential orders passed, can be challenged. Howsoever, the trial qua the challenge made to the said FSL report is *sub judice* before the appropriate authority as on date.

27. In support of the contentions made insofar learned counsel appearing for the respondents had placed reliance upon the dictum encapsulated in **Nidhi Kaim Vs. State of Madhya Pradesh** reported in **2017(4) SCC 1; Nidhi Kaim Vs. State of**

Madhya Pradesh reported in **2016(7) SCC 615; State of Rajasthan & Anr. Vs. JK Synthetics Ltd. & Anr.** reported in **AIR 2011 SCW 5656; S.P. Chengalvarya Naidu Vs. Jagannath & ors.** reported in **(1994) 1 SCC 1 and State of Chattisgarh & ors. Vs. Dhirjo Kumar Sengar** reported in **(2009) 13 SCC 600.**

28. Whilst placing reliance upon the afore-cited ratios learned counsel had averred that the issue pertaining to the offences of participation by cheating or fraud or impersonation, a grave and serious impact is levied upon the society and public interest. Therefore, the Courts ought not to interfere in the said matters and no equity should be drawn qua any degree obtained or services rendered which are attained by fraud.

29. Learned counsel representing the respondent-College/University Mr. Saini had contended that the role played by the college was miniscule rather zilch. Hence, no illegalities are carried by the said respondents.

OBSERVATION

30. Upon an assiduous scanning of the record, considering the aforementioned facts and circumstances of the case, considering the judgments cited at the Bar and taking note of the arguments averred by the learned counsel for the parties, this Court at this juncture, deems it appropriate to jot down indubitable facts:-

30.1 That the petitioner(s) appeared in the RPMT, 2009 Examination that was scheduled on 24.05.2009, seeking

admission in colleges imparting medical education/under MBBS course.

30.2 That at the time of the said examination the thumb impression and signature of the petitioner(s) was taking on the attendance sheet and their OMR sheets, so that the same could be matched at the time of subsequent counseling.

30.3 That in the year 2011 a news was flourished claiming that in the RPMT, 2009 as many as 16 candidates were alleged to be involved in unfair means i.e. committing cheating by impersonation. Subsequently, an F.I.R. was made to be registered at Police Station Ashok Nagar, Jaipur.

30.4 That based on the said complaint/F.I.R. a committee, consisting of five members was constituted by the respondent-University on 20.06.2009. Thereafter, the said P.K. Singh (IPS) Committee submitted its report on and around 30.09.2009, wherein it was stated that the allegations leveled against the accused-students were true.

30.5 That vide order dated 31.03.2011 passed **in S.B. Civil Writ Petition No. 9952/2009 (Supra)** it was opined that the admissions of 16 candidates/students and other similarly situated persons should be canceled/rejected, as the said candidates have participated in the said examination by means of cheating by impersonation and seats allotted to the said candidates should be cancelled at the threshold.

30.6 That during the currency of the said petition show cause notices were issued qua the petitioner(s) in pursuance to the Ordinance 152 of the Rules for dealing with cases of unfair-means and disorderly conduct at the University Examinations and the same were even replied by the petitioner(s) therein.

30.7 That resultant to the said petition vide order dated 12.05.2011, the candidature/studentship/admission of the candidates who were involved in the said offence of cheating by impersonation was cancelled with immediate effect, following the principles of natural justice and the Ordinance 152 of the Rules for dealing with cases of unfair-means and disorderly conduct at the University Examinations.

30.8 That being aggrieved of the said cancellation of admission the petitioner(s) filed **S.B. Civil Writ Petition No. 7222/2011 (Supra)** howsoever, the Court whilst adjudicating the said matter had passed a consent order, stating that if the reports submitted by the FSL Department (awaited at that time) are adverse to the petitioners, the order assailed therein i.e. the order by which the admission of the petitioners was cancelled would become effective and the admission would be treated as cancelled and if the said report turns up to be favorable to the petitioners, the impugned order of cancellation of admission shall be rendered ineffective and set-aside.

30.9 That the said judgment was further assailed at two levels however, the said appeals/reviews were rejected on the ground that the said order was passed under categorical conditions and

upon attaining the consent of the parties. Nonetheless, the Court also opined that the petitioners therein, on account of the consent tendered won't be precluded to challenge the order but the FSL report can be challenged by appropriate proceedings.

30.10 That it is undisputed fact that the petitioner(s) have already availed the efficacious remedy i.e. initiation of criminal proceedings, which as on date is *sub judice* before the competent authority.

OPINION

31. Ergo, considering the aforementioned observation of the instant matter, juxtaposing the averments raised by the learned counsel for both the sides, this Court deems it appropriate to dismiss the instant petition for the following reasons:

31.1 Vide judgment dated 30.05.2017 passed in **D.B. Special Appeal (Writ) No. 385/2017 (Supra)**, the Court whilst disposing of the appeals therein had categorically noted that the appellants therein have not assailed the original order, therefore, no opinion was expressed on merits. However, an opportunity to challenge the FSL reports, by way of appropriate proceedings, was granted and the same is availed by the petitioner(s). For the sake of convenience, the relevant extract from the said judgment is reproduced herein below:

> *"5. In our considered opinion,* ***in view of the earlier decision in 2014, the original order cannot be challenged and therefore, we have not expressed any opinion on merits of the matter in review.*** *The observations which are made by the learned Single Judge are very clear that he has taken*

the consent for reaching the conclusion but that laid to irreparable loss to the appellant.

6. In that view of the matter, without issuing notice, we clarify as under :-

i) Assuming without admitting that consent was taken, the parties cannot be put to a fix which takes away the right which has accrued right to challenge the order.

ii) In that view of matter, ***even if consent is given, it will be open for the appellant to challenge the report of Forensic Science Laboratory by way of appropriate proceedings.***

7. In case of success in that proceedings, it will be also open to challenge the consequential order passed after the clarification.

8. With the above clarification, the appeals stand disposed of."

(Emphasis laid)

31.1 It is pertinent to note that the controversy qua the cancellation of admission of the petitioner(s) has already attained finality in lieu of the judgment dated 12.05.2011 passed in **S.B. Civil Writ Petition No. 7248/2011 (Supra)** and judgment dated 07.12.2016 passed in **S.B. Civil Review Petition No. 222/2016 (Supra).** (The relevant extracts of the afore-stated judgments are already reproduced hereinabove, hence, refer the same) The said judgments categorically note that while following the principles of natural justice, considering the opinion formulated in the report issued by the P.K. Singh Committee and taking note of the other vital aspects of the instant dispute, the admission granted to the accused-petitioner(s) along with all the

consequential benefits was cancelled. Hence, the instant petition is also barred by the doctrine of *res judicata*.

31.2 It is correctly stated that the impugned order dated 17.11.2017 is a consequential communication tendered by the respondent-RUHS resultant to the judicial order dated 12.05.2011. Thence, it can be deduced that a situation wherein, the erstwhile communications or the proceedings and reports formulated thereupon are not assailed, this Court cannot entertain the prayer qua setting aside of the said impugned order.

31.3 It is an admitted fact that the petitioner(s), as on date, might have attained their MBBS degrees and have even applied for masters or specialization degrees or are rendering services as Medical Officers, nevertheless, the same was a calculated risk and as per the whilom judgments passed by the Single Bench Judge or by the Division Bench, no vested rights are created in favor of the petitioner(s).

31.4 Withal, it is germane to mention that the petitioner(s) herein are alleged to have committed the offence of cheating by impersonation to attain admission in MBBS course. Moreover, the importance and relevance of the said studies/occupation directly affects the lives of thousands of people, who seek medical assistance qua various issues. Moreover, as per the guidelines issued by the NMC/IMC and the opinion formulated by Hon'ble Apex Court in a catena of judgments for instance, in **Asha Vs. Pt. B.D. Sharma University of Health Sciences & Ors.; Civil Appeal No.5055/2012 (arising out of SLP (Civil) No.7440/2012)** it is made evident that the merit scored by the

candidate should be the sole criteria of his/her selection in the examination process.

31.5 The heinous offences like fraud, use of unfair means and practices, cheating by impersonation etc. affect not only the merits of other candidates but also the morale and will-power of all the aspiring candidates. This Court finds no reason to support such offences and crimes, and the admissions attained by them. It can be deciphered from the time-line of the matter in-hand, that time and again various Courts whilst considering the instant dispute have made categorical observations on merits and have even noted the consent of the petitioners.

31.6 Further, while placing reliance upon the ratio encapsulated in **Nidhi Kaim (Supra)** it can be noted that no equity can be drawn in the matters pertaining to fraud. The admission granted to the students who have appeared and qualified the concerned examination by unfair means or fraud, are a serious threat moreover, if

31.7 Additionally, while placing reliance upon the dictum enunciated in **Nidhi Kaim (Supra) – 2016 (7) SCC 615** it can be inferred that when it is a case of mass cheating and use of unfair means, decision to cancel the admission/results even after a lapse of ten years of examination and after completion of the specialization or rendering services, is appropriate. Therefore, it can be opined that the extra ordinary jurisdiction of the High Court as per the Constitution of India cannot be invoked under such circumstances.

31.8 While placing reliance upon the ratio encapsulated in **S.P. Chengalvarya Naidu (Supra)** it can be noted that fraud vitiates everything. Therefore, it is opined that once it is substantial that there is fraud committed by a person/number of persons, as in the matter in-hand the same is substantiated by the report furnished by the P.K. Singh Committee, no equity can be drawn in favor of such persons. The relevant extract from the afore-cited ratio is reproduced herein below:

> *"1.* ***"Fraud-avoids all judicial acts, ecclesiastical or temporal"*** *observed Chief Justice Edward Coke of England about three centuries ago.*
>
> *It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and honest in the eyes of law. Such a judgment/decree - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."*
>
> *(Emphasis laid)*

31.9 Further, reliance can be placed upon the dictum enunciated in **Secretary, Andhra Pradesh Social Welfare Residential Educational Institutions Vs. Pindiga Sridhar & ors.** reported in **(2007) 13 SCC 352,** wherein it was opined that the principles of natural justice are not to be mandatorily followed when fraud is committed.

> *"The High Court on the basis of the erroneous view upset the well-merited judgment of the learned Single Judge.* ***By now, it is well settled principle of law***

that the principles of natural justice cannot be applied in a straight jacket formula. Its application depends upon the facts and circumstances of each case. To sustain the complaint of the violation of principles of natural justice one must establish that he was prejudiced for non-observance of the principles of natural justice. *In the present case, the fact on which the appellant terminated the services of the respondent appointed on compassionate ground was admitted by the respondent himself that when he applied for the post on compassionate ground by its application dated 6.5.1996, his mother was in service. So also when he secured the appointment by an order dated 22.11.2002 his wife was in service since 3.8.1997 as Extension Officer in Rural Development and later on promoted as Mandal Parishad Development Officer at the time when he was appointed on compassionate ground. These facts clearly disclose that the appointment on compassionate ground was secured by playing fraud.* ***Fraud clocks everything. In such admitted facts, there was no necessity of issuing show cause notice to him.*** *The view of the High Court that termination suffers from the non-observance of the principles of natural justice is, therefore, clearly erroneous****. In our view, in the given facts of this case, no prejudice whatsoever has been caused to the respondent. The respondent could not have improved his case even if a show cause notice was issued to him."***

(Emphasis laid)

31.10 Withal, reliance can be placed upon the judgment passed in **State of Chattisgarh & Ors. Vs. Dhirjo Kumar Sengar** reported in **(2009) 13 SCC 600**.

> *"Respondent keeping in view the constitutional scheme has not only committed a fraud on the Department but also committed a fraud on the Constitution.* ***As commission of fraud by him has categorically been proved, in our opinion, the principles of natural justice were not required to be complied with."***
>
> *(Emphasis laid)*

CONCLUSION

32. In précis of the observations made insofar, it can be noted that the instant issue has a checkered history and a number of petitions, appeals and review petitions were filed, which have opined primarily the consent order of the petitioner(s) and that the said FSL can be assailed if deemed essential, nonetheless, the said judgments also noted that if in case the FSL reports qua the thumb impressions and signatures is against the petitioner(s) then the cancellation of admission order shall be operative with immediate effect; that vide order dated 20.04.2011 show cause notices were issued in the foremost round of litigation i.e. in **S.B. Civil Writ Petition No. 9952/2009 (Supra),** and subsequently the petitioner(s) on 30.04.2011 have submitted their reply with respect to the said show cause notices; that it is a settled position of law that fraud vitiates everything, the principles of natural justice are not to be mandatorily followed when fraud is committed and equity cannot be drawn in the matters when the degrees/admission is sought on the basis of fraud; that the FSL report and the report furnished by the P.K. Singh Committee had categorically affirmed the allegations leveled against the petitioners; that the respondent-RUHS duly complying with the

provisions of Ordinance 152 of the Rules for dealing with cases of unfair-means and disorderly conduct at the University Examinations passed the order dated 17.11.2017, which is a consequential communication to the erstwhile orders/judicial orders hence, no palpable error is present in the same; that the contentions raised by the learned counsel representing the petitioner(s) qua the fact that the respondents have failed to comply with the provisions of the Code of Criminal Procedure and the Indian Evidence Act is a misnomer; that the petitioner(s) have failed to assail the whilom orders, at appropriate time; that as per the ratio encapsulated in **Nidhi Kaim (Supra) – 2016 (7) SCC 615** Courts can cancel the admission which is attained by means of fraud and unfair practices, even after a lapse of a decade and that no extra-ordinary circumstances prevail, in order to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

33. In light of the aforementioned, the instant batch of petitions being devoid of any merits stands dismissed. (Judgment to be made applicable on *mutatis mutandis* basis) No orders as to cost. Pending applications, if any, shall stand disposed of.

(SAMEER JAIN),J

Preeti Asopa /292-300