

(2014) 10 AHC CK 0021

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 40533 of 2014

Ankit Tiwari and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Citation : (2015) 1 UPLBEC 469

Hon'ble Judges : Ashwani Kumar Mishra, J

Bench : Single Bench

Advocate : Ashok Khare and V.D. Shukla, Advocates for the Appellant; Neeraj Tiwari and R.K. Ojha, Advocates for the Respondent

Judgement

Ashwani Kumar Mishra, J.—U.P. Rural Institute of Medical Sciences and Research, Saifai, District-Etawah, is an institute of Paramedical Science established by the State Government, which is affiliated to Chhatrapati Shahu Ji Maharaj University, Kanpur. The institute was assigned the responsibility of conducting entrance examination for Joint Paramedical and Nursing Entrance Examination, 2014, and thereafter to conduct Counselling. The institute published notice on 2.5.2014, whereunder registration for appearing in the entrance test was to commence from 5.5.2014 with the last date for submission of online registration being 6.6.2014 and the date of examination was notified as 13.7.2014. The petitioners, who are three in number, were desirous of appearing in the entrance examination, duly applied for appearing in the entrance test, and were issued admission ticket and they actually appeared in the entrance test held on 13.7.2014. However, the petitioners learnt through a press release that the examination conducted on 13.7.2014, had been cancelled allegedly for unavoidable reasons, vide order dated 17.7.2014 and the date of next examination was to be notified through newspapers. It is this press release dated 17.7.2014, which has been challenged by filing the present writ petition. A further prayer has been made to command the respondents to publish the result of the entrance examination conducted on 13.7.2014 and grant admission, on

the basis thereof, to the petitioners. The writ petition was entertained and following orders were passed on 6.8.2014:-

"Learned Standing Counsel prays for and is allowed one week time to seek instruction as to what was the reason for cancelling the examination, which took place on 13.7.2014.

Put up/list on 18.8.2014."

2. Again on 19.8.2014, further time was granted to learned Standing Counsel to seek instructions and bring on record reasons for cancellation of the examination already conducted on 13.7.2014. The order dated 19.8.2014 is reproduced:-

"The instant petition has been filed challenging the order dated 17.7.2014 cancelling the examinations already held without assigning any reason.

On 6.8.2014, learned Standing Counsel was granted time to seek instructions. Learned Standing Counsel prays for further time to seek instruction.

Learned Counsel for the petitioners informed the Court that now, by an advertisement, 14.9.2014 has been notified for fresh examination. It has been submitted that in absence of any valid reason for cancelling the earlier examination, the holding of subsequent examination on 14.9.2014 does not appear to be justified.

In view of the above, let this matter be listed on 1.9.2014. In the meantime, learned Standing Counsel shall file counter affidavit detailing the reasons for which the earlier examination was cancelled and a decision to take fresh examination was taken."

3. A counter affidavit was filed by the institute on 1.9.2014. The matter thereafter was heard on 8.9.2014, wherein following orders were passed:-

"Sri Neeraj Tiwari, who appears on behalf of respondents 2 and 3, has sent illness slip.

Learned Counsel for the petitioners submitted that in the counter affidavit filed by Sri Neeraj Tiwari on behalf of respondents 2 and 3, in paragraphs 5, 6 and 7 thereof, allegations have been made against the conduct of respondent No. 4.

As per the endorsement in the writ petition, the learned Standing Counsel has accepted notice on behalf of respondents 1 to 4, but now learned Standing Counsel states that he appears only for respondent No. 1 and that due to mistake the said endorsement has been made in the writ petition.

In view of the above, let notice be issued to the respondent No. 4 through Registered Speed Post returnable within three weeks. Steps to serve the respondent No. 4 may be taken within three days.

List this petition on 7.10.2014 by which date the respondent No. 4 may file counter affidavit."

4. Notices, accordingly, were issued to respondent No. 4, who filed his counter affidavit on 7.10.2014 and the following orders were passed:-

"Rejoinder affidavit filed on behalf of the petitioners is taken on record.

A counter affidavit has been filed on behalf of respondent No. 4, which is taken on record and a copy whereof is also supplied to Sri Neeraj Tiwari, learned Counsel appearing for respondent No. 2 and 3.

Learned Counsel for the petitioners state that the Counselling is to start for admission to Para Medical Nursing Course from tomorrow, which fact is not disputed by Sri Neeraj Tiwari, learned Counsel for respondent No. 2 and 3.

On the request made by learned Counsel for the parties, let the matter once again appear tomorrow in the additional cause list, by which time, further affidavits, if any, may be exchanged."

5. The matter was heard on 8.10.2014 and while passing an interim order, case was fixed for delivery of orders on 13.10.2014. The order passed on 8.10.2014 was to the following effect:-

"Heard Sri Ashok Khare, Senior Advocate, assisted by Sri V.D. Shukla, appearing for the petitioner, learned Standing Counsel for the respondent No. 1, Sri Neeraj Tiwari, learned Counsel for the respondent No. 2 & 3, and Sri R.K. Ojha, Senior Advocate, assisted by Sri Ashish Kumar Ojha, appearing for the respondent No. 4.

Sri Ashok Khare, Senior Advocate, has challenged the decision taken by the respondent institute contained in the communication dated 17.7.2014, whereby the entrance examination conducted on 13.7.2014 for admission to Para Medical and Nursing Courses in the State of U.P. for the year 2014 has been cancelled, on account of alleged unavoidable circumstances. The submission advanced is that no reasons have been assigned in support of the decision, nor any reasons actually exist on record, and that the impugned decision is arbitrary and is unsustainable in law.

A counter affidavit has been filed by the respondent institute, wherein it has been stated that after the examination was conducted, certain complaints were received by the office of the Chief Minister and the attempt of the institute to contact the Examination Controller could not succeed. According to the respondent institute, it apprehended that the examination has not been conducted fairly, and therefore, the decision has been taken to cancel the examination. Thereafter, a show cause notice has also been issued to the respondent No. 4 on 23.7.2014. Sri Neeraj Tiwari also submits that fresh examination has been conducted thereafter, although parties are at issue on it and the date of such subsequent examination is also disputed.

Sri R.K. Ojha, Senior Advocate, appearing for the respondent No. 4, states that the facts stated in the counter affidavit of the respondent No. 2 & 3 are absolutely incorrect, inasmuch as the institute had already taken a decision to

have entrance examination conducted in the manner as has been done. The Director of the Institute had already passed an order on 18.6.2014, whereby respondent No. 4 was authorized to have the possession of all examination materials and OMR sheets etc., after the examination were concluded, so that transparency in holding of the examination is maintained. The attention of the Court has also been invited to the decision of the institute, whereby the outside agency had been appointed for the purposes of evaluation of the OMR answer sheets and the rates etc. had all been settled by the Director. The argument, therefore, is that there is no infirmity in holding of the examination and it has also been contended that after the examination were conducted, the OMR sheets were retained in the custody of respondent No. 4, as per the decision already taken by the Director on 18.6.2014 and respondent No. 4 left for Lucknow along with OMR sheets and other relevant records for being delivered to the agency, after obtaining permission from the Director, which document has also brought on record along with counter affidavit.

Prima facie, the contention of the petitioner that cancellation of examination conducted on 13.7.2014 was not for valid reason appears to have substance. Since the hearing in the matter has been concluded and sometime may be consumed in delivering judgment in the matter, and the Counselling is to commence from today itself, therefore, as an interim measure it is provided that till delivery of judgment, the Counselling, which is proposed to be undertaken by the respondent No. 4 institute from today, shall remain stayed.

This order has been passed in the presence of Sri Neeraj Tiwari, learned Counsel for the respondent No. 2 and 3, who shall inform the authorities concerned about passing of this order for its compliance.

List this matter for delivery of judgment on 13.10.2014."

6. On 13.10.2014, the matter was again adjourned, after noticing the previous orders passed in the matter, in order to give one further opportunity to the respondents to reply to the affidavit of respondent No. 4 and also produce the records, on the basis of which, the impugned action has been taken. The order dated 13.10.2014, which also records previous orders passed, is reproduced:-

"Hearing in the matter was concluded on 8.10.2014 and the matter was fixed for today i.e. 13.10.2014 for delivery of judgment. However, from the materials available on record, this Court is of the opinion that one opportunity is liable to be further granted to the respondents, before the matter is decided finally, for the reasons disclosed hereinafter.

The record of the writ petition shows that while entertaining the writ petition following orders were passed on 6.8.2014:-

"Learned Standing Counsel prays for and is allowed one week time to seek instruction as to what was the reason for cancelling the examination, which took place on 13.7.2014. Put up/list on 18.8.2014."

The matter was thereafter was taken up on 19.8.2014 and the following orders were passed:-

"The instant petition has been filed challenging the order dated 17.7.2014 cancelling the examinations already held without assigning any reason.

On 6.8.2014, learned Standing Counsel was granted time to seek instructions.

Learned Standing Counsel prays for further time to seek instruction.

Learned Counsel for the petitioners informed the Court that now, by an advertisement, 14.9.2014 has been notified for fresh examination. It has been submitted that in absence of any valid reason for cancelling the earlier examination, the holding of subsequent examination on 14.9.2014 does not appear to be justified.

In view of the above, let this matter be listed on 1.9.2014. In the meantime, learned Standing Counsel shall file counter affidavit detailing the reasons for which the earlier examination was cancelled and a decision to take fresh examination was taken."

A counter affidavit was filed on behalf of respondent No. 2 and 3, wherein allegations were made against the conduct of Examination Controller i.e. respondent No. 4. Accordingly, notices were issued to respondent No. 4.

A counter affidavit has been filed by respondent No. 4 in the matter on 7.10.2014, copy whereof was made available to Sri Neeraj Tiwari, learned Counsel appearing for the respondent No. 2 and 3. The matter was adjourned to 8.10.2014, by which time, learned Counsel for the parties were granted opportunity to file further affidavits, if any. Hearing in the matter was concluded on 8.10.2014.

Learned Counsel appearing for the respondent No. 2 and 3, on the basis of the report of the Officiating Director dated 18.7.2014, had stated that after the Examination Controller had left, complaints regarding bungling in examination were received on 15.7.2014 from the office of the Chief Minister and the Principal Secretary, Department of Medical Education, which ultimately led to cancellation of the examination, no record in support of the report, however, has been annexed. In response to the query of the Court, learned Counsel for the respondent No. 2 and 3 stated that the only material available on record was the report of Officiating Director dated 18.7.2014.

In the counter affidavit filed by respondent No. 4, materials have been brought on record to show that he had acted in accordance with the directions issued by the department. In such circumstances, as the reply of respondent No. 4 was filed on 7.10.2014 and the hearing was concluded on 8.10.2014, as such, it would be appropriate in the interest of justice that a further opportunity be granted to respondents to file reply to the affidavit of respondent No. 4. They may also bring on record materials in support of the report of the Officiating

Director dated 18.7.2014, if any, which prompted them to take the impugned action or any other material existing on record. The respondents may also produce relevant records, in this regard.

Since Counselling has been stayed by this Court, the matter is required to be adjudicated at the earliest. Let matter once again appear, as a case in the additional cause list, on 16.10.2014, by which time, the required affidavit be filed in the matter."

7. On 16.10.2014, an affidavit was filed on behalf of the respondent Nos. 2 and 3 and, therefore, the matter was adjourned to 17.10.2014. Following orders thereafter were passed on 17.10.2014:-

"Heard learned Counsel for the petitioners and learned Advocate General, assisted by the learned Chief Standing Counsel, who has appeared for respondent Nos. 2 and 3, at some length. However, It has been stated by the Chief Standing Counsel that records relating to the matter, are not available and will have to be obtained from the office at Lucknow, therefore, the matter may be differed.

On the request made by the learned Advocate General, the hearing of the matter is differed to 27.10.2014, on which date relevant record shall be produced before the Court."

8. On 27.10.2014, when the hearing in the matter was resumed, learned Counsel appearing for the respondents made a statement, which was noted and the hearing commenced. The order dated 27.10.2014 is reproduced:-

"Sri Ramesh Upadhyay, learned Chief Standing Counsel, states that he has instructions from Sri Arindam Chatterjee, Special Secretary of the State of U.P. that there exists no written complaint on record of the State Government, which led to cancellation of examination in question.

Learned Advocate General, who is present in Court, states that the Court may proceed to adjudicate the matter on merits in light of the aforesaid fact, on the basis of pleadings and material, which exist on record.

Argument of Sri Ashok Khare, learned Senior Counsel appearing for the petitioners and Sri V.B. Singh, learned Advocate General for the State, have been concluded.

Submission of Sri R.K. Ojha, learned Senior Counsel appearing for the respondent No. 4 remains inconclusive.

Put up tomorrow i.e. on 28.10.2014."

9. In view of the stand so taken by the learned Advocate General, this Court proceeds to adjudicate the writ petition, on the basis of pleadings and materials available on record of the writ petition, after noticing that there exists no record of any written complaint etc. on record of the State Government, against the

examination held on 13.7.2014.

10. A counter affidavit on behalf of the respondent Nos. 2 and 3 was initially filed by the Director of the institute. Paragraph Nos. 5, 6, 7 and 9 of the affidavit are reproduced:-

"5. That it is further stated while leaving the Institute neither he has taken any approval for arrangement of evaluation nor he has given any information to the Director of Institute. To maintain the transparency of Examination it is necessarily required to carry out OMR sheet and other documents out of institute with the permission of Director and further OMR sheet should be evaluated before a Team was constituted for that purpose and not by one individual person.

6. That in this reference complaints were filed before Principal Secretary, Medical Education as well as Chief Minister of the State and direction was issued to carry out the enquiry on 15.7.2014. Immediately thereafter Institute has tried to contact the Controller of Examination but his all known mobile numbers were found switched off. Thereafter Institute has tried to contact him by other means then at 8.45 P.M. he has informed that he is in seriously and unable to have any talk. At this stage at 9.45 P.M. after having contact with him, he was directed to come back Institute without any evaluation of OMR sheet but he has informed that he is suffering with heart disease and it is not possible to him to come back. Again around 12.00 night he has informed the Director that he is admitted in ICU and he will take at least 4-5 days in coming back to Institute.

7. That on 17.7.2014 Controller of Examination again first time informed his location on telephone that he is admitted in ICU in Military Hospital, Lucknow and prior to that he has never informed about his location. Whole conduct of Controller of Examination is very objectionable and which creates serious doubt about the relativity of examinations result. Under these circumstances a meeting of officers was held on 17.7.2014 and it was decided in the meeting to cancel the earlier entrance examination held on 13.7.2014 and taken fresh examination on 14.9.2014. In this reference a detail report was also submitted vide letter dated 18.7.2014 to Principal Secretary, Medical Education, Lucknow. A photocopy of letter dated 18.7.2014 is being filed as Annexure CA-1 to this affidavit.

9. That thereafter the institute has decided to take fresh examination and it was decided to hold the same on 14.9.2014. For that purpose a press release dated 8.8.2014 was issued and new date was also uploaded on the website Institute."

11. Respondent No. 4, pursuant to the notices issued by this Court, appeared in the matter and filed his counter affidavit along with annexures. The stand taken by the respondent No. 4 was that the manner of holding of examination had been decided in the meeting of the institute dated 26.3.2014, pursuant to which, the then Director passed an order on 18.6.2014 appointing respondent No. 4 as Coordinator and Examination Controller for the examination to be held on 13.7.2014. The order dated 18.6.2014 provided as under:-

It was also stated that the agency for evaluating the answer sheets as well as rates payable to it, were all approved and settled by the Director himself. Respondent No. 4 further brought on record a confidential letter addressed to the Director, upon which the permission was granted by the Director for petitioners to leave the institute on 15.7.2014 in connection with confidential examination work, which reads as under:-

It is the case of respondent No. 4 that pursuant to the permission granted by the Director, he proceeded to take the OMR sheets and got them delivered to the agency, selected for evaluation of OMR sheets by the Director. The Controller also stated that after he had delivered the OMR sheets to the agency, selected for the purposes, at Lucknow, he suffered serious heart ailment, and therefore, was admitted to Army Command Hospital at Lucknow, where he remained hospitalized and ultimately got discharged on 20.7.2014. The certificates and medical prescription etc. have been brought on record as Annexure No. 6 to the affidavit.

12. Pursuant to the liberty granted by this Court, an affidavit in rebuttal to the affidavit of respondent No. 4 was filed by the Registrar of the institute. Paragraph Nos. 04 to 16 of the affidavit, which elaborates the stand of institute, are reproduced:-

"4. That entrance examination for Paramedical Science and Nursing Course was held on 13.7.2014 simultaneously in 13 centres in Etawah. The examination was based on objective type of questions to be answered on OMR sheets. About ten thousand candidates had participated in the examination for about 610 seats. The OMR sheets (Answer sheets) were kept in about 10 boxes, which itself is a bulky baggage. For the purposes of its transportation from U.P. Rural Institute of Medical Sciences and Research (U.P.R.I.M.S.) to Lucknow at S.R. Net Computer Services Pvt. Ltd., it was necessary to have additional hands/officials, security men to ensure its safety and safe transportation.

5. That from the records it transpires that respondent No. 4 all alone without taking security guards or without taking any additional hands undertook the journey himself to Lucknow, S.R. Net Computers. Before leaving or before taking the permission for visiting Lucknow he did not indicate or disclose that he would be carrying OMR sheets for its evaluation to Lucknow. Entire travel and journey was kept a closely guarded secret. Before taking permission he should have requested for security guards and further would have disclosed that he would be moving with OMR sheets and specific disclosure should have been made to the Director of Institute that he was going to Lucknow for getting evaluation of OMR sheets.

6. That with a plan and design Dr. Shukla appears to have completed a formality of by obtaining a permission to leave the station (Safai) from the Director of Institute but did not disclose which place/city he was visiting or that he would be carrying valuable OMR sheets nor there is any whisper that he required security.

It can be appreciated that carrying 10 or 9 boxes all alone which contain the answer sheets of near about 10,000 candidate was itself a risky affair and could not have been handled by one individual all alone. There was an inherent risk of tampering loss, manipulations etc.

7. That it is pertinent to submit that this the second year when the Institute had conducted examination in the previous year that is year 2013-14 even the then Director Dr. J.B. Singh was present in Lucknow at the time of evaluation of OMR sheet had taken place. But this time Dr. Shukla all alone by maintaining opaque secrecy took up the entire task by himself. The Institute tried to contact Dr. Shukla about his movement and whereabouts on phone but he could be contacted only at night on 15.7.2014 at about 8.45 P.M., who disclosed that he was ill. He was also instructed by the Director on phone to return back immediately with all the papers and OMR sheets but he expressed his inability and disclosed he had a heart trouble and cannot come back to Institute. Later on at about 12 in the midnight Dr. Shukla suo moto informed that he is being admitted in ICU without disclosing the name of the hospital or the city.

8. That on 17.7.2014 for the first time respondent No. 4 Dr. Shukla informed that he has been admitted in Lucknow hospital. Only on 17th the location of the city and the hospital could be known to the Director.

9. That it is the settled practice that the movement of the answer sheets (OMR sheets) for the purpose of its safety, security, due precaution is taken and more than one individual/officials with security personnels should accompany. One official is not burdened with such serious responsibility as there may be chances of its tampering and may be injurious to ensure the fairness of examination system.

10. That the way Dr. Shukla acted in this matter coupled with many complaints received even in the government serious doubts and suspicion about the sanctity of the examination are being raised. The Institute to maintain fairness of the competitive examination and to ensure absolute fairness in the selection process took a decision for re-examination which has already been held and Counselling had also commenced. It is also significant to notice that only 3 candidates out of 10,000 candidates who had appeared in the examination have filed this writ petition out of which one petitioner namely Pooja Shukla has also appeared in the second examination. The Institute is conducting the exercise of second examination at its own expenses and has given a chance without charging fresh examination fee to all the 10,000 candidates to appear in the examination to maintain purity, fairness of examination process.

11. That the Director of Institute was in dark and was not made aware by respondent No. 4 that he was carrying bulky baggage containing OMR sheets to Lucknow for the purpose of its evaluation whereas respondent No. 4 being subordinate to Director and was under his control should have taken precaution of disclosing in brief details about his movement and that of the answer sheets.

12. That the complaints were flooded in the office of Principal Secretary, Medical Education as well as office of the Chief Minister, the direction was issued for holding an enquiry in the entire matter by the order dated 18.7.2014. True copy of the letter is being filed as ANNEXURE No. 1 to this affidavit.

13. That the Institute of the answering respondent starting functioning from the academic session 2012-2013. In the first year admissions were held on the basis of merit determined by the marks obtained by the students in the High School and Intermediate Examination. From the academic session 2013-14 admission are being made on the basis of entrance examination conducted by the Institute itself. Last year also respondent No. 4 was the controller of the examination and the entire process of examination, evaluation of answer sheets, declaration of results, and admission of students was done in the supervision and control of the Director of the Institute. This year however, respondent No. 4 chose to transport the OMR sheets all by himself without informing the Director and without taking any other officer or authority of the Institute along with him. Movement of the answer sheet only in the sole custody of respondent No. 4 without there being any other officer or authority of the Institute, without information to the Director in this regard and without even taking the security personnel itself casts a doubt as to whether or not any tampering may have been done in the OMR sheets. The conduct of the respondent No. 4 itself reinforces the complaints made to different authorities.

14. That upto 17.7.2014 the Institute was not aware about the location of respondent No. 4 as such the Director of the Institute requested the Additional Director (Administration) to carry out an enquiry and submit the report.

15. That the matter was placed before the examination committee of the Institute which came to the conclusion that the sanctity of the examination had become doubtful. Looking into the entire aspect of the matter the examination committee recommended for the cancellation of the examination and a fresh examination has already been conducted. A copy of the report of the Additional Director along with the report of the Committee is being filed herewith as ANNEXURE NO. 2 to this affidavit.

16. That continuous absence of respondent No. 4 and unavailability of his location for substantially long period with the answer sheets created a doubt in the mind of the examination committee and only with a view to maintain the sanctity of the examination the Institute has taken a decision for cancellation of examination in question and for re-holding the examination for the purposes of admission of students."

13. The aforesaid affidavit of the Registrar has been replied by respondent No. 4 by filing a fresh affidavit, in which, following averments have been made in paragraph No. 4:-

"4. That in reply to the contents of paragraph Nos. 4 and 5 of the counter affidavit filed on behalf of the Respondent Nos. 2 and 3, it is submitted that it is

the OMR Sheets which were kept in 9 boxes, having total weight of 10 Kg. and in order to avoid any doubt or dispute over the issue the deponent has taken away those boxes in a small vehicle with the permission of the Director and went Lucknow and got those documents received on 15.7.2014 itself. It is further relevant to mention that deponent has been given those responsibilities by the then Director with the direction that he will maintain all transparency and secrecy over the issue, however, the deponent has got certain direction/threat on telephone from the certain higher officials, whether said direction given from the office of the Chief Minister or not for that the deponent is not clear but the deponent has received telephone from the office of the Chief Minister directing that deponent has to be selected 3 persons namely (1) Neeraj Kumar, having Roll No. 300413, (2) Diksha, having Roll No. 110649 and (3) Priti Yadav, having Roll No. 215112. The deponent has also maintained a C.D. by dubbing voice which deponent has received on his Mobile number from the Mobile No. 9411020906. The deponent is ready to produce CD which was prepared by him, at the time of hearing, whereas, for kind perusal of this Hon"ble Court the deponent is annexing copy of the version which was made on 10.7.2014 and 13.7.2014 on the Mobile phone of the deponent by the Mobile No. 9411020906 is being filed herewith and marked as Annexure CA-1 to this affidavit. Due to the aforesaid reason and also as per direction given by the then Director the deponent has no option but to maintain necessary secrecy for the aforesaid purposes."

It has also been alleged that the examination process was conducted with due diligence and sanctity of the process was maintained by him. It has been stated that he had acted in the best interest of transparency and fairness of examination process itself and disclosure of unnecessary details had been avoided so as to ward off extraneous influences being exercised upon him. It is also stated that his movements in connection with the affairs of the examination was with due intimation and permission of the Director, and it was only on account of extraneous influence that the examination process has been scuttled, as he has refused to honour influences un-authorizedly exercised in the matter. In the affidavit, the details of the calls received by him and the contents of the talks and the messages received have been annexed. Yet another affidavit has been filed by the respondent No. 4 explaining the circumstances and the manner, in which he had carried the OMR sheets from institute at Saifai, Etawah to Lucknow. It is also stated that any association of security guards and the staff of the institute would have obstructed the secrecy of the examination process itself under the peculiar facts and circumstances of the present case. The petitioners have also filed a rejoinder affidavit.

14. I have heard Sri Ashok Khare, learned Senior Counsel assisted by Sri V.D. Shukla for the petitioners, Sri Vijay Bahadur Singh, learned Advocate General assisted by Sri Ramesh Upadhyay, learned Chief Standing Counsel on behalf of the respondent Nos. 1, 2 and 3 along with Sri Neeraj Tiwari, who also appeared for respondent No. 2 & 3 and Sri R.K. Ojha, learned Senior Counsel assisted by Sri A.K. Ojha for the respondent No. 4 and have considered the materials

available on record.

15. Learned Counsel for the petitioner submits that the entrance examination in question had been conducted in absolutely fair and transparent manner and there was no material to support any allegation of irregularity in the examination process, and therefore, the cancellation of entrance examination was wholly unjustified.

16. Sri R.K. Ojha, learned Senior Advocate, appearing for the respondent No. 4, has submitted that holding of the examination was strictly, in accordance with the decision already taken for the purposes by the Director, and sanctity of the process had been maintained. The argument advanced is that the extraneous influence exercised to secure admission for some of the candidates since had not been honored by him, therefore, for oblique and ulterior motive the examination itself was scuttled. It has been stated that there is absolutely no material available on record to show that any illegality or infirmity was caused in holding of the examination and the OMR sheets based on the examination of 13.7.2014 are still in the safe custody of the respondent institute itself and no discrepancy therein had been reported till now, and in such circumstances, the cancellation of the examination itself was arbitrary.

17. Learned Advocate General, on the other hand, defended the action of the respondent institute. According to him, the decision to cancel the examination was taken in order to ensure sanctity of the process of examination itself, which cannot be said to be arbitrary. He also submitted that even otherwise, merely holding of examination does not create right in favour of any one and it is always the concern of the institute to assess whether the examination has been conducted in a fair and transparent manner and if any bona fide doubt is created in the process, the decision to cancel it can always be taken. He also submitted that once the institute has exercised such a course and subsequent examinations have been conducted, in which one of the petitioner has also participated, it would not be appropriate for this Court to interfere in the matter.

18. From the materials brought on record of the writ petition, as well as the submissions advanced, the factual scenario emerges that the respondent No. 3 institute was to conduct Para Medical and Nursing Entrance Examination - 2014. The institute proceeded to consider the modalities in its meeting dated 26.3.2014, wherein respondent No. 4 Dr. K.M. Shukla was appointed as examination controller. The Director by his order dated 18.6.2014 specifically appointed respondent No. 4 to act as coordinator and examination controller for the examination to be held on 13.7.2014. The agency, which was to carry out evaluation of OMR sheets was also selected by the examination controller on 30.4.2014, which decision was approved by the Director on the same day and the rates were also approved for being paid to the agency on 1.5.2014 by the Director. The respondent No. 4 was authorized to keep in his possession all records, seal, question paper and answer books. In his capacity, as examination controller and coordinator Dr. Shukla, was also held responsible for secrecy and

confidentiality of the examination records. He was to function under the supervision of the Director and undertake all steps required for the smooth conduct of the examination itself. The entrance examination was conducted at different centres on 13.7.2014 and the OMR sheets (answer sheets) were specifically kept in the custody of respondent No. 4, as per the decision already taken by the Director. It is also apparent from the record that the respondent No. 4, as per the decision already taken, proceeded in connection with the confidential examination work from the institute on 15.7.2014 with the permission of the Director.

19. The first counter affidavit filed on behalf of the institute states that the complaints were filed before the Principal Secretary, Department of Medical Education, as well as the Chief Minister of the State, on the basis of which a direction was issued to conduct an enquiry on 15.7.2014. The report of the Officiating Director dated 18.7.2014 has been annexed along with first counter affidavit, which clearly refers to letter issued by the Director on 18.6.2014, according to which, the entire examination was to be conducted under the supervision of the Director by the controller Dr. Shukla, who was responsible to ensure entire process of examination. The report of the Officiating Director states that after Dr. Shukla left the institute, a communication was received from the office of the Chief Minister and from the office of Principal Secretary, Department of Medical Education, to the effect that complaints, regarding widespread irregularities have been received, and therefore, an immediate enquiry in the matter be got conducted. It is after receiving of such instructions from the office of the Chief Minister and Principal Secretary, that the Officiating Director proceeded to make telephonic contact with Dr. Shukla, but it is stated that all his known mobile numbers were found switched off. The report further states that attempts to contact him from other sources fructified only at 8.45 P.M., when Dr. Shukla informed that he has fallen ill and he is not in a position to talk. The Director in his report, which is Annexure-1 to the counter affidavit dated 26.8.2014, states that when contact could be again made at 9.45 P.M., Dr. Shukla was asked to immediately return, but Dr. Shukla responded by saying that he is sick and having heart trouble, and therefore, he is being hospitalized and it is not possible to immediately return. The report further states that at about 12.00 night Dr. Shukla informed that he is hospitalized in ICU and he will take 4-5 days to return. The Officiating Director in his report has stated that no permission was obtained by Dr. Shukla before proceeding from the institute and generally OMR sheets are opened before a committee, whereafter it should get assessed by computer, but Dr. Shukla has not got any committee constituted from the Director nor any officer has gone with him, and therefore, the results of the entrance examination are entirely dependent upon Dr. Shukla and the agency. The Director, therefore, states that the results of the examination have no longer remained reliable and it is only on 17.7.2014 that Dr. Shukla has informed the Officiating Director that he is actually admitted in the Military Hospital, Cantt., Lucknow, in ICU and prior to it, he has never disclosed his

location. The report also stated that Dr. Shukla has not disclosed the name of the agency with whom, the OMR sheets were kept at Lucknow, and therefore, the sanctity of the examination process itself is in doubt. Therefore, the decision has been taken to cancel the examination and to hold fresh examination.

20. Learned Advocate General has also referred to another report dated 17.7.2014, which is Annexure-2 to the counter affidavit of the Registrar of the institute, which is signed by five persons, wherein also the contents of the report of Officiating Director have been reiterated. It has been stated that after the examination process was complete, it was found that OMR sheets have been taken by Dr. K.M. Shukla to unknown location, which is indicated at some place at Delhi and as neither security personnel nor any other officer was with Dr. Shukla, therefore, the process itself, as held, lost its sanctity. Learned Advocate General, on the basis of these reports, has submitted that decision to cancel the examination was taken bona fide, inasmuch as the attempt on part of the officials of the institute to contact respondent No. 4 repeatedly failed, and therefore, the responsible officials become suspicious about the process adopted by the respondent No. 4, and therefore, the decision to cancel the examination was taken and that the Court should not interfere in such circumstances.

21. It is not in dispute that sanctity of the examination process must be maintained and the decision of the institute for the purposes is entitled to great weight. It is also not disputed that a bona fide exercise of power by the institute for the purposes, if is based upon some material, is not liable to be interfered with. However, the facts, which emerges on record, are rather disturbing and the Court is not satisfied that a bona fide decision was taken to cancel the examination.

22. The order of the Director dated 18.6.2014 clearly authorized respondent No. 4 to be responsible for the custody, safety and holding of fair entrance examination. It is also not disputed that the custody of OMR sheets was with respondent No. 4. It is also not disputed that respondent No. 4 did proceed from the institute with a specific permission obtained from the Director on 15.7.2014. The Director or for that matter any other authority of the institute found no fault in the conduct of examination or the movement of respondent No. 4 from the institute itself.

23. The sudden anxiety on part of the institute to locate whereabouts of Dr. Shukla or to doubt the examination process itself was a direct consequence of the communication received from the office of the Chief Minister and the Principal Secretary, Department of Medical Education about complaints of widespread illegalities in holding of the examination. This Court ever since entertaining of the writ petition and in almost all subsequent orders directed the State to bring on record the alleged complaints, which are said to have been received by the office of the Chief Minister or the Principal Secretary, Department of Medical Education, but not a single complaint of any kind, has been brought on record. The proceedings of the writ petition were deferred from time to time in order to

enable the respondents to produce the alleged complaints which prompted the office of Chief Minister or the Principal Secretary of the Department to intervene and direct the institute to hold an enquiry or monitor the whereabouts of Dr. Shukla, but no such material has been brought before the Court. The proceedings were specifically deferred on the request of learned Advocate General assisted by Chief Standing Counsel to produce the material in this regard. However, learned Advocate General has fairly stated that there exists no complaint on record of the State, which led to cancellation of the examination itself. He also stated that no complaint of any kind exists on record. The thrust of argument of learned Advocate General is that the institute is comparatively new and it is only the second occasion when it has conducted such examination and as it found that respondent No. 4 was not traceable, despite repeated attempts, therefore, suspicion got generated in the matter. He further contends that respondent No. 4 had no authority to take the OMR sheets without permission of the Director and since he went all alone, without any security guard, driver or any other officer, therefore, this in itself is sufficient to indicate that the conduct of respondent No. 4 was strange in the matter and the decision to cancel the examination cannot be said to be without any basis.

24. Learned Counsel for the respondent No. 4 submitted that respondent No. 4 was being pressurized to ensure induction of certain candidates in the examination by any means.

25. The respondent No. 4 in his subsequent affidavit has brought on record details of the telephone calls, which he had received allegedly at the instance of somebody from Chief Minister's residence at Saifai instructing him to ensure inclusion of certain candidates in the entrance examination. The details of the telephone number and the contents of the talks have been enclosed. This Court is not going into the merits of such details offered by respondent No. 4, as it can be a matter of investigation by appropriate agency, but the materials brought on record by respondent No. 4, particularly in para 4 therein does constitute sufficient material for any prudent person to be apprehensive of extraneous interference being exercised in the matter of holding of examination, and therefore, maintaining of complete secrecy by the officer concerned cannot be said to be wholly unjustified. This opinion of the Court gets support from the fact that while the office of Chief Minister had intervened in the matter, on the pretext of receiving of complaints, whereas it is admitted before this Court that no such complaint actually exists on record.

26. It is not in dispute that OMR sheets were required to be in the safe custody of the respondent No. 4. It is also not in dispute that no order had been passed by the Director which authorized other persons to have custody of the OMR sheets and the record of the respondents itself proves that it was only on 7.8.2014 that a committee for the purpose was constituted. The records of the respondents also clearly shows that the OMR sheets of the examination conducted on 13.7.2014 had been received by the institute from respondent No.

4, pursuant to order of the Director on 19.7.2014. Learned Advocate General has fairly stated that all such OMR sheets are lying in the safe custody of the institute itself.

27. The Director of the institute had already granted permission to respondent No. 4 to proceed from the institute on 15.7.2014 in connection with the confidential examination work. The permission, however, does not specifically refer to taking of OMR sheets by respondent No. 4 along with him and this issue has been highlighted by learned Advocate General. In the opinion of the Court, once the permission had been granted to respondent No. 4 to proceed from the institute in connection with the confidential examination work, it was not essential for him to have mentioned the taking of OMR sheets with him. The Court finds substance in the submission of Sri R.K. Ojha, Senior Advocate that the applications seeking permission to leave for examination work are typed by the subordinate staff and considering the fact that holding of examination was a confidential matter, requiring utmost secrecy, it was a bona fide exercise of restraint on his part in not mentioning the taking of OMR sheets, particularly in light of the bona fide apprehension of alleged interference at the instance of somebody claiming from the residence of Chief Minister itself. Even otherwise once the Director was granting permission to respondent No. 4 to proceed with confidential work of examination, it can be safely assumed that the purposes of such movement was within the knowledge of the Director and no exception can be taken to non mentioning of OMR sheets in the letter of respondent No. 4 seeking permission to leave from the institute. This Court also finds that Director at his level had no doubts about the purpose of movement of respondent No. 4 and the situation changed only on account of the intervention by the office of Chief Minister.

28. The Director had authorized the examination controller and holding of the examination was specifically as per his instructions. The movement of the examination controller on 15.7.2014 was with his permission for the confidential examination purpose. If the Director sensed any irregularity, he could have verified the matter or taken any action in the matter. The Director, however, found no infirmity in the conduct of entrance examination or movement of controller with the OMR sheets and even otherwise no tempering or manipulation of any kind in the OMR sheets has been reported even after the records containing OMR sheets were received by the institute. It is only the alleged complaint received in the office of the Chief Minister regarding widespread illegality in the examination that the entire process was initiated to locate the whereabouts of respondent No. 4. No such complaint or material suggesting any irregularity in the examination till date has been brought on record despite repeated opportunity granted to the State, in such circumstances the alleged suspicion which is cause of cancellation of examination is without any material or basis. If the very initiation of the action is not in good faith and is based on no material the exercise of power itself is vitiated. The observations made by the Apex Court in its judgment in *Express Newspapers Pvt. Ltd. and Others Vs. Union*

of India (UOI) and Others, as contained in para 119 to 121, are clearly relevant for the present purposes and are therefore reproduced:-

"119. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in *S. Pratap Singh v. State of Punjab*. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an "alien" purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in *General Assembly of Free Church of Scotland v. Overtown* "that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred". It was said by Warrington, C.J. in *Short v. Poole Corpn.* that:

"No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative."

In *Lazarus Estates Ltd. v. Beasley* Lord Denning, L.J. said:

"No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

See also, in *Lazarus* case at p. 722 per Lord Parker, C.J.:

"Fraud" vitiates all transactions known to the law of however high a degree of solemnity."

All these three English decisions have been cited with approval by this Court in *Pratap Singh* case.

120. In *Ram Manohar Lohia v. State of Bihar* it was laid down that the Courts had always acted to restrain a misuse of statutory power and more readily when improper motives underlie it. Exercise of power for collateral purpose has similarly been held to be a sufficient reason to strike down the action. In *State of Punjab v. Ramjilal* it was held that it was not necessary that any named officer was responsible for the act where the validity of action taken by a Government was challenged as mala fide as it may not be known to a private person as to what matters were considered and placed before the final authority and who had

acted on behalf of the Government in passing the order. This does not mean that vague allegations of mala fide are enough to dislodge the burden resting on the person who makes the same though what is required in this connection is not a proof to the hilt, as held in *Barium Chemicals Ltd. v. Company Law Board* the abuse of authority must appear to be reasonably probable.

121. In the present case, the petitioners have alleged several facts imputing improper motives which have not been specifically denied and there is only a bare denial with the assertion that the facts are not relevant. Mere denial of allegations does not debar the Courts from inquiring into the allegations. In answer to the rule nisi, the respondents here and in particular Respondent 1, the Union of India, Ministry of Works & Housing disdained from filing a counter-affidavit and left it to Respondent 2, Lt. Governor of Delhi to controvert as best as he could the specific allegations made by the petitioners that the impugned action was wholly mala fide and politically motivated i.e. that there was malice in fact as well as malice in law which actuated the authorities in issuing the impugned notices. Respondent 2 did not controvert these allegations but asserted that the allegations were "wholly irrelevant" to the matter in issue. He disclaimed all responsibility for the issue of the impugned notices and instead tried to justify all his actions throughout the affair as the Lt. Governor. As the hearing progressed, on being put wise on the legal issues, Respondent 2 filed an additional affidavit trying to refute the allegations of personal bias and animosity on his part. As already stated, Respondent 1 put in a supplementary affidavit of M.K. Mukherjee, Secretary, Ministry of Works & Housing which instead of meeting the specific allegations made by the petitioners, avers that they were "wholly irrelevant" and that the Union of India adopts the counter-affidavit filed by Respondent 2. The submissions advanced at the Bar by learned Counsel appearing for the Union of India were wholly inconsistent with the stand taken by the respondents in their counter-affidavits. The learned Counsel made no attempt to refute the charge that the impugned notices were wholly mala fide and politically motivated."

29. The aforesaid observation has been reiterated in *Vijay Shekhar and Another Vs. Union of India (UOI) and Others*, .

30. In the absence of any complaint or material to suggest irregularity in holding of the examination or violation of any instructions issued in connection with holding of the examination no fault can be found with the process of examination itself. Serious doubts arise upon the bona fide of the decision itself, when no material or complaint is actually available on record of the State indicating even allegation of alleged widespread illegality. In the backdrop of the stand taken by the respondent No. 4 that he had received direction allegedly by someone from the residence of the Chief Minister to ensure induction of certain candidates, the holding of enquiry on account of receiving of such non existed complaint raises serious doubts on the entire action of the respondent itself.

31. Learned Advocate General has also relied upon the judgment of the Apex

Court in Shankarsan Dash Vs. Union of India, , which has been followed in Union Territory of Chandigarh Vs. Dilbagh Singh and others, and in the judgment in B. Ramanjini and Others Vs. State of Andhra Pradesh and Others, to contend that mere selection in examination does not constitute any indefeasible right to claim appointment and the scope of judicial review in cancellation of examination by government is extremely limited. The proposition laid down by the aforesaid judgments are the law of the land but have no application to the facts of the present case, inasmuch as the judgment in Shankarsan Dash (supra) also holds the action of the State to be valid when taken for bona fide and valid reasons and is not taken arbitrarily. In the present case, since the entire action is wholly without any material, and has been taken on the basis of non existence material, such exercise of power apparently lacks bona fide and even the limited extent of judicial review does permit the Court to interfere with the action, as it is based on no material and lacks bona fide.

32. Sri Ashok Khare, learned Senior Advocate, appearing for the petitioner has referred to a division bench judgment of this Court in Ram Babu Sahu Vs. State of U. P. and Others, which in turn relied upon a decision rendered in Writ Petition No. 11394 of 2008 dated 2.3.2009, Ram Prakash Singh v. State of U.P. reported in 2009 (9) ADJ 316 wherein the judgment in Shankarsan Dash (supra) has also been considered. Para 15, 16, 17, 22 & 23 of the judgment in Ram Prakash Singh (supra) are reproduced:-

"15. Having heard learned Counsel for the parties and perusing the records, I find that any of the seven reasons or all of them taken together could not be the basis of the decision to cancel the entire election. There are no allegations on record that the selections for backlog vacancies were not widely advertised or that the selected persons did not belong to the categories for which the vacancies were existing. Further, there is no complaint that merit list in the descending order of the 1600 candidates was not prepared strictly in accordance with the marks awarded to them in their educational qualifications. The members of the selection committee observed that wherever the marks were found to be erroneously entered in the list the mistakes were immediately corrected. They did not report, that they did not have opportunity or did not award marks for interviews or that the marks awarded by them were not properly shown in the list. The Government order dated 20.7.2002 for award of marks for achievements on sports was superseded by the U.P. Procedure for Director Recruitment for Group-C posts (Outside the Purview of the U.P. Public Service Commission) Rules, 2002, which clearly provided in Rule 5(3)(c) the number of marks to be awarded for achievement in sports. The members of the Committee did not agree on any common method of awarding marks in the interviews. They did not decide to award any minimum or maximum marks to the candidates and thus it was open to each of the members to award marks on their own assessments. The enquiry committee has found the variance of marks only in case of two candidates namely Kamal Pati and Sweta Kumari. In fact there are no allegations of mala fides or any undue favors raised against the District

Panchayat Raj Officer, except in stating that he had awarded lesser marks to two candidates in interviews and had not corrected the marks for achievements in sports. Further, it is stated that he had maintained undue secrecy in preparing the final results by typing out the appointment letters and their dispatch.

16. No exception could be taken nor there were any directions given to the District Panchayat Raj Officer for keeping the records of selection only in his office. His concern in keeping the records of selections at safer place, could not be a ground to cancel the selection. Further, there is no allegation that the appointment letters were typed out at a private place. The District Panchayat Raj Adhikari used the computer of Deputy Director of his department for typing the appointment letters and thereafter deleting the entries on the computer to maintain secrecy. Thereafter he ensured that the establishment clerk of his office was engaged in dispatching the appointment letters. Purchase of stamps and the posting of the appointment letters by Railway Mail Service cannot be said to be an illegality. If the appointment letters were posted by a clerk other than the clerk, who was routinely doing dispatches, on the dates, when she did not affect the validity of the selections.

17. The Court finds that the District Panchayat Raj Officer took all reasonable care to avoid unfairness in selections. He was unnecessarily victimized by suspending him and thereafter in lodging an F.I.R. against him and clerks of his office. The Court prima facie finds that the entire action taken against the District Panchayat Raj officer and the clerks in his office, at the instance of some persons in the State Government, who have not been named, appear to be taken on their frustration in failing to break the secrecy. The members of the Selection Committee and the Enquiry Committee have not found any such illegality, which vitiates the selection or the selection of any candidate. They have failed to point out any violation of the Rules of 2002, which may have affected the final result. It is thus apparent that the District Magistrate was acting either at the behest of the Minister of the Direct Panchayati Raj, who did not succeed in getting their candidates appointed.

22. In *Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others*, , the Supreme Court held that sufficient materials should be collected to be gathered through investigation in fair and transparent manner, and that the illegalities must go to the root of the matter vitiating the entire selection process, and the appointees in majority must be found to be part of the fraudulent purpose or may themselves must be found to be corrupt, to cancel the selections. The Supreme Court observed that High Court should also consider the consequence of en masse cancellation of selection. It carries a big stigma particularly, when the cancellation of selection is directed on the serious charges of corruption. For the misdeeds of some candidates, honest and good candidates should not suffer in en masse cancellation. In the interest of all concerned and particularly in the interest of honest candidates the State should have undertaken the taks of finding out the illegalities in respect of each selections. The unscrupulous

candidates should not be allowed to damage the entire system in such a manner, where innocent people also suffer great ignominy and stigma. The State also must not leave any stone unturned to bring the guilty to book. If there is any stigma, no officer howsoever high should be spared.

23. In the same report the Supreme Court observed in paras 71 to 73 that a decision to cancel the selection en masse should not be taken in undue haste. It was found that a note containing 90 pages was sent to the Chief Secretary of Punjab on 22.5.2002 and that service of all the officers were terminated on the next day. The undue haste was beyond anticipated apprehension. It was necessary for the State to show as to how records moved so as to satisfy the conscience of the Court that there had been proper and due application of mind on the part of authorities concerned. An action taken in undue haste may be held to be mala fide vide *Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others*, . The basic principle underlying the rule is that justice not only be done but must also appear to be done. This rule is not confined to the cases, where judicial power is exercised. It is appropriately extended to all the cases, where an independent mind has to be applied to arrive at a just and fair decision between rival claims of the parties vide *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, . It was held in this case, that justice is not function of the Courts alone; it is also the duty of all those; who are expected to decide fairly between contending party. The strict standards applied to authorities exercising judicial powers are being increasingly applied to administrative bodies, and it is vital to maintain rule of law in welfare of the State, where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentality of the State should discharge their functions in a fair and just manner."

33. The division bench also observed as under in para 18, 19 & 20 in *Ram Babu Sahu (supra)*:-

"18. We have considered the submissions, and perused the documents annexed to the writ petition. We find considerable substance in the argument advanced by Shri Ashok Khare, that the findings of misconduct in the irregularities in selection process were subject matter of adjudication by the High Court. This Court had recorded specific findings that the irregularities alleged in the selection could not be a ground to cancel the entire selection. There were no allegation that the selections of backlog vacancies were not advertised or that the selected persons did not belong to the categories in which the vacancies were existing. Further, there was no complaint, that the merit list in the descending order of the 1600 candidates was not prepared strictly in accordance with the marks awarded to them in their educational qualifications, which was the only criteria to award marks and in which there was no discretion given to the Selection Committee. Their discretion was only available in the marks awarded for interviews. The members of the Selection Committee had observed that wherever the marks were found to be erroneously entered in the list, the marks were immediately

corrected. None of the members of the Selection Committee had complained that they did not have opportunity to interview the candidates or that the marks awarded by them were not properly shown in the list. The Government Order dated 20.7.2002 for award of marks for achievements on sports was superseded by the UP Procedure for Direct Recruitment for Group "C" Posts (Outside the Purview of UP Public Service Commission) Rules, 2002, which clearly provided in Rule 5(3)(c) the number of marks to be awarded in achievement in sports. The members of the Committee did not agree on any common method of awarding marks for the interview. They did not decide to award any minimum or maximum marks to the candidates in interviews and thus it was open to each of the members to award marks on their own assessment. The enquiry committee found variation of marks only in case of two candidates namely Kamlapati and Swata Tiwari. There were no allegations of mala fides and any undue favors against District Panchayat Raj Officer except in stating that he had awarded lesser marks to the two candidates in the interviews, and had not corrected the marks for achievements and sports.

19. The Court had also found that the anxiety to maintain secrecy in preparing the final result and by typing them out with the help of two clerks in the department, and its despatches by a person other than the despatch clerks could not by itself be treated to be an irregularity, which vitiated the selections.

20. The Court had also recorded findings that no exception could be taken nor there were any directions given to the District Panchayat Raj Officer, to keep the records of the selection only in his office. His concern for safety of the records could not be a ground to cancel the selections. There was no allegation, that the appointment letters were typed out at a private place. The District Panchayat Raj Officer used the computer of the Deputy Director in his office for typing out the appointment letters and thereafter deleted the entries to maintain the secrecy. The deployment of the establishment clerk in preparing the select list and in dispatching the appointment letters after purchasing the stamps and posting by Railway Mail Service cannot be said to be an illegality, which vitiated the selections. If the appointment letters were typed and posted by a clerk other than the clerk, who was routinely doing such dispatches, the selection cannot be held to be bad in law. The Court also recorded specific findings that the District Magistrate, either at the behest of the Minister, or Director, Panchayati Raj was making an attempt to break the secrecy, and since he did not succeed in getting their candidates appointed, he prepared a report, which in any case could not dispute the validity of the selection. There was no complaint by any person or any candidate that the select list was not drawn in accordance with the categories, or that any person could not secure appointment or suffered on account of failure to prepare the list category-wise."

34. Reliance placed on the judgment of the Supreme Court in *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, , dealt with a different factual scenario where mass copying has been resorted to, and therefore, it was

held that principles of natural justice would not apply. No such allegation with regard to conduct of examination has been pointed out nor does it exit on record, and therefore, the principle laid down in the said decision does not help the cause of respondents.

35. It is also submitted that in the subsequent examination one of the petitioners has participated, and therefore, on this ground also the petition is not liable to be entertained. It is not in dispute that the writ petition had been entertained by this Court and the examination process itself was undertaken during the pendency of the writ petition and 2 out of 3 petitioners have not taken part in it. In counter affidavit filed by the respondent State, it has been stated that fresh examination was to be held on 14.9.2014 but during the course of submissions it has been pointed out that the examination was actually not conducted on that day but was conducted on 18th September or some date thereafter. The respondents have not brought on record any material to show exact date of holding of second examination and whether the date was intimated to all. The advertisement for holding of fresh examination mentions the date as 14.9.2014 but the holding of examination on some subsequent date after 14.9.2014 has been claimed, which also creates doubt as to whether the subsequent date was intimated to all the candidates. Nevertheless once this Court finds that the cancellation of first examination conducted on 13.7.2014 itself was without any basis and arbitrary, the holding of any subsequent examination will not be material. Even otherwise all the students in both the examinations are same and once they have appeared in the examination on 13.7.2014 and the examination process was fair and transparent, no prejudice would be caused if their OMR sheets are assessed.

36. In view of the discussions and consideration made above, this Court finds the impugned action of the respondent institute, in cancelling the examination dated 13.7.2014 to be without any basis, lacking bona fide, and based upon non existed material, and as such, it cannot be sustained. The impugned order dated 17.7.2014, cancelling the examination held on 13.7.2014 is, therefore, quashed. A direction is further issued to the respondents to forthwith process the OMR sheets of the examination held on 13.7.2014, which are lying in the safe custody of the institute itself, and based upon the results thereof, the Counselling and admission to Para Medical and Nursing course be offered, in accordance with law. Accordingly, the writ petition is allowed. No order is passed as to costs.