

(2010) 07 AHC CK 0352
In the Allahabad High Court

Dr. Arpit Jain and Others

APPELLANT

Vs

Dr. Anurag Kumar Tiwari and Others

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0352

Hon'ble Judges : Ferdino Inacio Rebello, C.J;A.P. Sahi, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. This is an appeal questioning the correctness of the judgment of the learned Single Judge whereby an order passed by the Vice Chancellor of the Banaras Hindu University dated 6.4.2010 and the consequential notification dated 13.4.2010 have been quashed in relation to the 2010 Post Graduate Admission Test in M.D./M.S. Courses against 43 seats for internal candidates.
2. The appellants before us are the respondents in the writ petition and they submit that the order of the Vice Chancellor ought to have been upheld as the procedure adopted by the two Incharge Professors of Examination for preparing the results had vitiated the process of evaluation of the OMR sheet of the examination, and as such the Vice Chancellor was perfectly justified in issuing the direction for holding a fresh examination.
3. The facts in short necessary for the adjudication for the present controversy are that the University runs a Medical Institute with provisions for Post Graduate courses in Medical Science and the process for admission, conduct of courses and holding of examinations, followed by award of degree are governed by the provisions of the Banaras Hindu University Act, the Statutes framed thereunder and the Ordinances adopted by the University read with circulars and decisions of the University regarding procedure for the holding of such examination.
4. The powers of the University in this regard remain undisputed between the parties. Suffice it to say that that under the said powers a Coordination

Committee was duly constituted for over seeing the procedure of the said examination. The Coordination Committee in its meeting held on 12.11.2009 resolved to hold the examinations and accordingly a schedule was prepared which is contained in the minutes, and forms part of the record as Annexure 2 to the counter affidavit of the University filed before the learned Single Judge. The resolution records that a merit screening test shall be held captioned as the Banaras Hindu University All India Entrance Examination, 2010. The admission procedure for internal candidates namely those who have passed out from the Banaras Hindu University was to be conducted in the manner as prescribed in Resolution No. 1(b). The test was to be held on 14.2.2010 and the prospective declaration of the result of the said test was scheduled to be uploaded by the University as its website by the third week of March, 2010. The test was to be an objective one comprising of 200 questions printed on the OMR sheet. A brochure to that effect was also issued and in Clause 9 of the said Resolution it was prescribed that the evaluation of the said OMR sheets and its uploading on the University Website will be done with the help of the Computer Centre of the Banaras Hindu University. The preparation of the question paper being a matter of utmost secrecy was left to the Professor Incharge to be handled accordingly. It is to be noted that the Director of the Institute of Medical Sciences under the orders of the Vice Chancellor of the University informed Professor L.D. Misra of the Department of Anaesthesiology, I.M.S. Banaras Hindu University that he was being appointed as the Professor Incharge of the M.D./M.S. Entrance Examination, 2010. Apart from this Profesor S.K. Gupta of the Department of General Surgery was appointed as Co-Incharge of the said examination.

5. The Information leaflet which was issued to the students has been filed as Annexure 3 to the counter affidavit containing the provisions in relation to evaluation of answer-sheet, result and selection which is quoted below:

(i) Not withstanding any thing to the contrary contained anywhere in the ordinances of the university, no scrutiny/revaluation of the answer sheet shall be allowed on any ground.

6. The test was conducted as per the schedule and it is undisputed that 50 candidates appeared for the said examination against the internal 43 seats that were available. The two Incharge Professors are stated to have manually checked the OMR sheets and the result of the scores obtained by the candidates in the said examination was declared on 19.2.2010. The said list is Annexure 4 to the counter affidavit of the University which contained the marks obtained by all the said 50 students who had appeared.

7. After the aforesaid list was published, three candidates, out of whom the appellant No. 1 Dr. Arpit Jain is one of them and one Dr. Rohit Kumar and one Dr. Rahul Bharadwaj moved applications making a request for certain informations under the Right to Information Act. The request of Dr. Rohit Kumar and Dr. Arpit Jain the appellant was to provide a copy of their OMR sheets and key answers as also the OMR sheets of all so candidates. The request of Dr. Rahul Bharadwaj was

in relation to the number of students who had appeared in the general and OBC category for the said examination.

8. The University, through the Information Officer, informed the appellant Dr. Arpit Jain about the intimation given by the two Professors who were Incharge of the Examination that the said request cannot be entertained in the light of the conditions stipulated to the effect that notwithstanding anything to the contrary contained in the Ordinances of the University, no scrutiny or re-evaluation of the answer sheets shall be allowed on any ground. It may be noted that the request of the candidates was neither for scrutiny nor for re-evaluation and it was a simple information sought under the Right to Information Act to the effect as indicated therein.

9. The turn in the dispute came thereafter when the two Incharge Professors are stated to have proceeded on their own on the premise that the candidates who had sought information under the Right to Information Act appeared to be extremely dis-appointed with the declaration of the results as they had scored much higher marks than what has been indicated in the score list which was published. Another candidate Dr. Shreyash Pandey is alleged to have approached the said three Professors who is the appellant No. 2 before us for supply of the OMR sheet on 26.3.2010. The two Professors who were Incharge and Co-Incharge decided to re-check the OMR answer sheets again as they suspected that some mistakes might have occurred due to manual checking. They appeared to have manually re-checked the OMR sheets again and in their reply dated 5.4.2010 before the Rector of the University they have stated that they found a major error in the total of the marks of the candidate Dr. Rohit Kumar. There was an enhancement of 27 marks in the case of the said candidate as in the first score sheet, marks obtained by him were 108 whereas in the manual re-checking they were 135 .The score remained unchanged in respect of the other two candidates. This mistake and this re-checking adopted by the two Professor is alleged to have been brought to the notice of the Director who is further alleged to have communicated to the two Professors r his approval for re-checking through the Computer Centre as provided for in the decision of the Coordination Committee. However, they further alleged that they have been asked to re-check the OMR mark sheet a third time before getting it scanned in the Computer Centre.

10. After such manual re-checking as well as the checking through the OMR Scanner the two Professors Incharge revised the merit list of the screening test which had been declared earlier and prepared another list on 1.4.2010 which was put on the notice board on 2.4.2010 intimating change of marks in the scores obtained by seven candidates. On publication of this second list several candidates moved a detailed representation to the Vice Chancellor on 3.4.2010 including some of the present appellants and some of the contesting respondents. Noticing the said complaint, a copy whereof has been filed as Annexure 1 to the stay application in the present appeal, the Vice Chancellor

under his order dated 4.4.2010 constituted a Committee with the Rector Banaras Hindu University as a Chairperson and the Director of IMS, the Controller of Examination as well as the Deputy Registrars as members to enquire into the said complaint made by the candidates. A copy of the said order is enclosed as Annexure 2 to the stay application. An explanation was called for from the two Professors who were the Incharge of the Screening Test and they submitted their replies on 2.4.2010, the contents whereof have been indicated herein above. A copy of the said reply is Annexure 3 to the stay application.

11. The report of the Committee was submitted to the Vice Chancellor which is Annexure 4 to the stay application wherein the Committee gave a finding that as per the instructions in relation to scrutiny/re-evaluation is concerned, there was no occasion for any such re-checking or re-evaluation by the two Professors who ought not to have done it themselves and they did not bother to maintain any record of the first or second or third manual evaluation. The Committee further found that the re-evaluation attempted by the Professors was without any formal request and the same was in violation of the rules. The Committee further expressed surprise as to how the Professors missed the evaluation of 50 questions in the OMR sheet of Dr. Rohit Kumar.

12. Accordingly the Committee recommended that the entire process to be adopted for conduct of such tests should be reviewed through an Expert and the possible lacunae need to be identified and corrective measures taken. The Committee concluded that the process of evaluation was in contravention of the relevant rules and without due care. A suggestion was made by the Committee which is to the following effect:

- a) The entire test may be cancelled and fresh test may be conducted. This would, however, mean penalizing the candidates for no fault of theirs and may arouse genuine protests from them.
- b) The result declared on 01.04.2010 may be cancelled since this is in contravention of the explicit Rule 3(iii) of the said test. However this would lead to acceptance of the Mark list which has been shown to be incorrect on subsequent computer verification.
- c) The mark list declared on 19.02.2010 may be withdrawn and that declared on 01.04.2010 may be declared as valid. However, in this case, Rule 3(iii) will stand violated.

13. The Vice Chancellor on a consideration of the said report proceeded to pass an order on 6.4.2010 cancelling both the lists and issued directions for holding examination afresh. This action of the Vice Chancellor came to be challenged by the respondents-appellants praying for the following relief:

- 1. Issue writ order or direction in the nature of certiorari calling upon the respondent No. 3 to produce the order dated 6.4.2010 mentioned in the impugned order dated 13.4.2010 on records of the writ petition and quash the

said impugned order dated 6.4.2010 as also the order dated 13.4.2010, issued by respondent No. 4 (Annexure 5 to the writ petition).

2. Issue a writ order or direction in the nature of mandamus commanding the respondents 2, 3 and 4 to hold counseling of the petitioners for admission in MD/MS Course 2010 on the basis of first merit list (Annexure-1) to the writ petition within fortnight from the command of this Hon"ble Court.

14. The appellants put in appearance and took a stand that the University in the facts and circumstances of the case was justified in proceeding to hold fresh examination. The University also took a stand that the two Professors who had conducted the examination had violated the conditions in relation to scrutiny/re-evaluation which was impossible and they on their own could not have proceeded to re-examine the answer sheet as they had functious officio after the declaration of the first list on 19.2.2010. The University also contended that in such a situation the order of the Vice Chancellor was justified and even if two views were possible a judicial review may not be attempted keeping in view the nature of the examinations that were pertaining to the Post Graduate admissions which was submitted by the University. The holding of fresh examination would ensure complete fairness towards all the candidates and doubt expressed about functioning of the two Incharge Professors would be set at rest.

15. The learned Single Judge took a view that the decision of the Vice Chancellor did not indicate any reference to the fact that may have perused the Vice Chancellor to doubt the sanctity of the examination and therefore he could not order for the cancellation. The learned Single Judge observed that what was required to be seen was any defeat of the examination or mistake in evaluation of the OMR sheets. It was further observed that the recommendations made by the committee to the Vice Chancellor were not considered in correct perspective as the Committee had given three options to the Vice Chancellor and it is not known as to why the Vice Chancellor did not choose to accept the other options.

16. We have heard Sri P.N. Saxena learned senior Counsel for the respondents-appellants and Sri Ashok Khare learned senior Counsel for the private respondent Nos. 1 to 36 and Sri V.K. Singh learned senior Counsel assisted by Sri Hem Pratap Singh for the respondent-university and its authorities.

17. During the hearing of this appeal learned Counsel have brought to the notice of this Court the order passed by the Supreme Court dated 13.5.2010 wherein certain directions have been given after hearing the learned Counsel for the M.C.I., the State of U.P. and the other States whereby their Lordship have fixed a final deadline for the students to join the allotted course by 30.6.2010. It has further been directed by the Supreme Court that the unfilled seats of All India Quota would be deemed to have lapsed. It is, therefore clear that the mandate of the Supreme Court with regard to the completion of such admissions is clearly to the effect that it shall be completed by 30.6.2010.

18. In the instant case the judgment was delivered by the learned Single Judge

on 21.5.2010 and it is admitted that on all hands that under the interim order passed in this special appeal, the candidates including a majority of the contestants before us have been granted admissions under the second revised score list which was declared on 1.4.2010 and published on 2.4.2010. Thus the directions of the learned single judge have been complied with.

19. Sri P.N. Saxena learned Counsel for the appellants contends that the procedure adopted by the two Professors in hastily declaring the result on a manual check of the OMR sheets is in contravention of the mode prescribed which should have been done by the Computer Centre through a scanner. He submits that there was no occasion for the two Incharge Professors to have undertaken the evaluation themselves manually. He further submits not only this, the manner in which there has been a substantial change in marks of one of the students, and few minor changes in the case of six other students raises a serious suspicion and a genuine doubt about the conduct of the two Professors who undertook the exercise of change of answer sheets manually. He further submits that there was no provision for any such re-checking or scrutiny and the declaration of the list on 1.4.2010 was unsupported by any authority. It has further contended that the learned Single Judge committed an error by accepting the submissions made by the respondents-petitioners which was directly in conflict with the relief claimed by them. He submits that the respondent-petitioners had clearly questioned the correctness of the subsequent list and had prayed for admissions being made on the basis of the first list published on 19.2.2010. Accordingly it is submitted that the learned Single Judge ought not to have granted the relief as prayed for.

20. Sri Saxena has further invited our attention to the application moved in this special appeal making a prayer that an appropriate direction be issued to the University to ensure transparency in holding of the examinations and the declaration of the results as well as evaluation of the OMR sheets so that in case any student has any doubt the same can be ascertained by adopting a fair procedure.

21. Sri V.K. Singh learned senior Counsel for the University contends that the University may not have filed an appeal against the impugned order yet the University supports the cause of the appellants and at the same time would abide by the orders of this Court. He however takes exception to the finding and observations that were made by the learned Single Judge on the steps taken by the Vice Chancellor and he submits that the Vice Chancellor in order to ensure fairness had taken a decision to cancel the examinations on the asking of the candidates themselves. He further submits that prompt decision by the Vice Chancellor was taken as he was wholly unaware about the two Incharge Professors having manually evaluated the results who upturned the same through a revised list. He further informs the Court that the Vice Chancellor was not made aware of any such action being taken by the two Professors and they did it on their own without any authority. Accordingly the Vice Chancellor

immediately constituted an Enquiry Committee and after having received the findings of the said Committee cancelled the examination in order to ensure fair admission in the Post Graduate courses.

22. Sri Ashok Khare, learned senior Counsel for the respondents has come with a case that as a matter of fact there was an error of tabulation and even though the respondents-petitioners had initially prayed for maintaining the selection on the basis of the first list, yet they were satisfied with the second list and therefore, this Court may not interfere with the directions of the learned Single Judge, more so when the admissions have already been completed within the time schedule given by the Apex Court.

23. Having carefully examined the record we may at the very out set clarify that in view of the specific schedule fixed by the Apex Court for finalising of admissions for the allotted courses by 30.6.2010 we would not prefer to disturb the admissions and issue directions for holding of a fresh examination. In our opinion, this would violate the deadline fixed by the Apex Court in Writ Petition (Civil) No(s). 189 of 2010 Naval Asija and Ors. v. Union of India and Ors. disposed on on 13.5.2010. The admissions as intimated by the learned Counsel having been completed, the same need not be disturbed at this stage.

24. The question which has been raised before us is that the two Professors who were made Incharge were not empowered to enter into the re-evaluation or scrutiny for re-calculating the marks as per the provision indicated above. Sri V.K. Singh learned senior Counsel for the University has produced the original answer sheets before us. Having perused the same, particularly with regard to the answer sheet of Dr. Rohit Kumar, we find that out of 150 questions answered by him, the said candidate had obtained 108 marks whereas after the re-checking in respect of 50 questions of the last column he has been awarded 27 additional marks, which the two Professors stated that it had been left out and not evaluated due to inadvertence. Even if the doubt expressed by the appellants is taken into consideration then the candidate who had obtained substantial marks namely 108 out of 150, a presumption prima facie on the basis of his performance can be drawn that the candidates could have possibly answered the last column as well and was capable of obtaining 27 marks. This would be in proportion to his previous marks obtained. We may not be construed to express any final opinion on the aforesaid process of award of additional marks to Dr. Rohit Kumar but we have stated this as a prima facie observation. Nonetheless the Committee which had submitted its report did not comment on the enhancement of marks as a forgery and only expressed its doubt and surprise about non evaluation by the two Professors. The Committee mainly rested its decision on a manual proceeding of evaluation as adopted by the two Professors Incharge.

25. We have reservations about the manner in which the two Professors proceeded for changing and re-changing the method of evaluation. The Vice Chancellor therefore in our opinion cannot be said to have taken an irrational or

perverse decision and he may have been justified in arriving at the conclusion.

26. We therefore accept the contention of Sri V.K. Singh learned Counsel for the University that the learned Single Judge was not justified in commenting upon any lapse on the part of the Vice Chancellor. The Vice Chancellor in our opinion, faced with such a situation rightly took the steps to rectify the error if any. It is something different that the mistakes as reflected by the two Incharge Professors may have been genuine but we are not required to go into the same, more so when the Vice Chancellor has already passed an order for fixing the responsibility on the concerned persons for the alleged lapses.

27. What remains to be indicated by us is the suggestion made by the appellants through an application for ensuring transparency in future examinations. Sri P.N. Saxena submits that appropriate directions be issued by this Court to ensure transparency in future examinations so that such mistakes would not be repeated in future. To this proposal neither the learned Counsel for the University nor the respondents-petitioners have any objection.

28. The episode which gave rise to this controversy involves the fate of candidates who prepare themselves for acquiring Post Graduate course in the field of Medicine. They have high hopes and their stakes are such that in our opinion the aforesaid suggestion by Sri Saxena deserves to be accepted. This dispute definitely reflects that the fate of the students was put in jeopardy by adopting of a procedure which cannot be said to be thoroughly transparent. It is undisputed that the candidates are not allowed to take back their question papers. It is also undisputed that no carbon copy of the OMR sheets are provided to the candidates and the key answers are not loaded on the website of the University. This is also evident from the attitude of the University as per the reply given under the Right to Information Act where the request for supply of OMR sheet but there was a clear refusal on the part of the University.

29. In our opinion such a practice cannot be said to be fair to the candidates. The candidates are entitled to know as to how and in what manner their answers do not match with the key answers. For this they are entitled to retain their question papers, a carbon copy of the OMR sheets and information about the key answers.

30. We therefore direct the University that in order to ensure free and fair examinations and in order to remove any doubt or suspicion in the mind of the candidates, the University shall in such forthcoming Entrance Examinations for Post Graduate Admissions introduce a system of allowing the candidates to retain their question papers. The University shall also make a provision for a carbon copy of the OMR sheets and allow the candidates to retain the same and shall also make available the key answers to the questions after declaration of the results in case of demand by any candidate by placing it on the website of the University.

31. Accordingly without disturbing the provisional admissions made under the

order of this Court, the special appeal is disposed of with the aforesaid directions. The candidates who have been admitted for their allotted courses their admissions shall be treated to be final if they are otherwise eligible for the same.