
(1995) 11 AHC CK 0066

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24029 of 1995

Dr. Rakesh Kumar Singh and others

APPELLANT

Vs

Banaras Hindu University, Varanasi and others

RESPONDENT

Date of Decision : 23-11-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1996 All 281

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Ashok Bhushan, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. Petitioners are students of M.D./M.S. (Ayurved) in the faculty of Ayur-vedic Institute of Medical Sciences, Banaras Hindu University, Varanasi, hereinafter referred to as the University. They by means of this petition under Art. 226 of the Constitution of India challenged the validity of the orders dated 23-8-1995 passed by the Controller of Examination of the University cancelling the result of the examination of the petitioners and the order of Vice-Chancellor dated 20-8-1995 whereby the Vice-Chancellor directed to conduct the entrance examination of M.D./M.S. (Ayurved) again. Petitioners pray for issuance of a writ of certiorari quashing the aforesaid orders.

2. The brief facts of the case giving rise to the present petition as set out in the writ petition, are that the Institute of Medical Sciences in the University has got two faculties namely Faculty of Ayurved and Faculty of Modern Medicines. The faculty of Ayurved runs only post graduate courses namely M.D./ M.S. (Ayurved). The said post graduate courses are three years courses. The petitioners, who were eligible to be admitted in the aforesaid courses, applied for their admission. Thereafter admit, cards were issued to them and the written entrance test was held on. 5-7-1995. In the said test, petitioners were required to answer 180

objective questions. One day before the said test a complaint regarding leaking of some of the questions set out by an examiner from Lucknow was made, however, the said complaint was found to be false and the result of the entrance test was declared on 15-7-1995. Petitioners were declared to have qualified in the entrance test. Thereafter, the petitioners were admitted in M.D./M.S. (Ayurved) course, for the year 1995 and after counselling respective departments were allotted to them. The candidates, who were unsuccessful in the said test made complaints to the Proctor of the University. On the other hand, petitioners made an application on 28-3-1991 requesting to issue the call letters for medical check up which was conducted on 29-7-1995. They have also represented to Vice Chancellor from completion of other formalities of admission. It was on 1-8-1995 that the petitioners came to know about the enquiry which was conducted behind their back. For asserting the correct facts regarding the said enquiry, they wanted to meet Dr. Dubey but he refused to see them. The petitioners were astonished to know on 21-8-1985 from a news item in a daily news paper "Dainik Jagran" that their admission in the M.D./ M.S. (Ayurved) courses were cancelled. The orders of cancellation of petitioners' examination were, however, not communicated to them.

3. It was on 23-8-1995 that the Controller of examination communicated the order of the Vice-Chancellor which reads as under:--

"NOTIFICATION"

Regarding: Cancellation of MD/MS. (Ay) Entrance Test, 1995.

In view of the mass representations regarding some technical anomalies and the reports of the Inquiry Committee constituted thereof, the aforesaid examination of MD/MS (Ay.) 1995, stands cancelled under the orders of the Vice-Chancellor. This examination is being re-scheduled to be held as early as possible.

Sd/N.N. Pandita

"CONTROLLER OF EXAMINATION"

4. The petitioners, as stated above, have challenged the validity of the said order.

5. On behalf of the respondents a counter-affidavit has been filed wherein it has been stated that there were only 25 seats of MD/MS (Ayurved) Post Graduate Courses in University in which as many as 577 candidates were called to appear in the entrance test on all India basis. The entrance test was held on 5-7-1995. In the said test 180 questions were to be answered by each one of the candidates and every question carried one mark. It has further been stated that on the Complaint regarding irregularities committed in the said test enquiry committee was set up which consisted of three professors. The enquiry committee submitted its report which is contained in annexure C.A.I, and recommended for revaluation of the answer books. It has been stated that the Vice-Chancellor on the basis of the said enquiry report, directed that the aforesaid entrance test be conducted again, pursuant to the said order the

controller of examination issued the order dated 2-8-1995 cancelling the aforesaid examination and directing for re-schedulement of the examination. The other allegations made in the writ petition have also been controverted in the counter affidavit.

6. The petitioners, thereafter filed rejoinder affidavit in which the fact stated in the counter affidavit were refuted and it was asserted that the enquiry committee never recommended for cancellation of the examination, neither the Vice-Chancellor nor the Controller of Examination, therefore, had jurisdiction to cancel the examination and to direct to conduct the examination again. It has also been stated that unsuccessful candidates had no right to file the complaint as they have also appeared in the entrance test and took chance to get success and they were thus estopped from contending that the said examination was liable to be cancelled. Further after examination the complaint of the said Candidates, the University took decision to declare the result which was accordingly declared on 15-7-1995 by which the right to get admission accrued to the petitioners and other successful candidates. It has also been asserted that the petitioners have absolutely no knowledge or notice of the alleged enquiry, which was conducted behind their back.

7. Along with the counter affidavit, the order of Rector appointing the Inquiry Committee and the order of the Vice-Chancellor referred in the order of the Controller of examination dated 23-8-1995, were not filed. I, therefore, asked the learned counsel for the respondents to place the said orders on the record of this case. Learned Counsel for the respondents along with an application filed photostat copies of the aforesaid orders which form part of the record of the writ petition.

8. The order of the Rector as notified by the Registrar of the University appointing Inquiry Committee reads as under:--

"No. R.PS/Inq. Comm./MD AYURD/I dated 31 July, 1995.

NOTIFICATION

Rector has been pleased to appoint an Inquiry Committee consisting of the following:

1. Professor B, Dubey, (Chairman)
2. Professor V. V. Menon, Dept. of Applied Maths, I.T.
- " 3. Professor R.C. Pandey, Dean SVDV
4. Sri S.S. Srivastava, Asstt. Register(Eqv) Member Secretary.

to look into the allegations made by the candidates seeking to M.D. (Ayurved) with regard to irregularities in the Entrance test.

Rector has also desired that the committee may submit its report with specific recommendations within a week.

Sd/- REGISTRAR"

9. On the basis of the aforesaid order, the Enquiry Committee submitted its report, which is contained in Annexure C.A.-I to the counter affidavit. The conclusion and recommendation, which are relevant for the purposes of the present case, are quoted below:--

"The Committee did find that there was ambiguity/incorrectness/printing error in some of the question. The Dean on receipt of representation, put in a lot of effort in the short duration available and gave her recommendations regarding the doubtful questions. However, for evaluation, only four questions were correctly deleted, while three other questions considered ambiguous by the Dean were not deleted. In addition the Committee feels that a few more questions (four out of 21 questions reviewed by the Committee) need a second Opinion by the experts. There may be a few other ambiguous questions in the Q. paper.

Considering the above, the Committee is of the opinion that a re-evaluation is necessary after due screening of the entire Q. paper and its key by a panel of experts.

In view of the fact that the result seems to have been declared, the Committee feels that legal opinion be sought in case re-evaluation is to be performed."

10. The Vice-Chancellor thereafter appears to have solicited the opinion of L.A. who has opined as under:--

"I have examined the report, I am informed that only results have been declared and since complaints were received and committee appointed to enquiry into the allegations, admission have not yet been made.

Since admissions have not yet been made decision about re-evaluation/scrapping the examination or any other decision may be taken by the competent Authority."

11. Thereafter the Vice-Chancellor passed the following orders:

"In view of the findings of Eng. Committee it is decided that the Entrance Exam, of MD/MS-Ayd. should be conducted again."

Sd/- Vice-Chancellor. 20-8-1995.

12. I have heard learned counsel for the parties and have carefully gone through the record.

13. After hearing the learned counsel for the parties, judgment was reserved on 20-9-1995. In the meanwhile, an application was filed through Sri Ramesh Upadhyaya, Advocate on behalf of Anand Kumar Agarwal and other intervenors, who were none else, but some of the unsuccessful candidates. An opportunity of hearing was also given to the intervenors and their counsel was heard.

14. Learned counsel for the petitioners has vehemently urged that the orders of the Vice-Chancellor as well as of Controller entailed civil consequences to the

petitioners and have adversely affected their rights, they have been deprived to pursue their studies in the aforesaid classes. It was, therefore, obligatory upon the respondents to afford an opportunity of hearing to the petitioners before passing the said orders, but no opportunity of hearing and to defend them-selves having been afforded to them, the orders having been passed in violation, of principle of natural justice, were, therefore, non est and were liable to be quashed. Learned counsel for the petitioners, further urged that from the findings recorded by the enquiry no case for cancellation of examination and cancellation of admissions of the petitioner was at all made out. The enquiry Committee did not recommend for cancellation of the examination, it simply recommended for re-evaluation of the answer books, therefore, there was no justification for the respondents either to direct to hold examination again or to cancel the same. He further urged that the Vice-Chancellor has passed the order dated 20-8-1995 without applying his mind to the facts of the case, wholly arbitrarily without recording any reason. The order passed by him was thus, nullity. It has also been urged that without taking experts opinion as recommended by the enquiry Committee it was not open to the Vice-Chancellor to form any opinion and to pass any order with respect to the examination in question. Expert's opinion having not been taken, the-Vice Chancellor has erred in law in directing to conduct the examination again. Learned counsel has also urged that the finding recorded by the enquiry committee was with regard to the four questions only. The answers of which were stated to be incorrect, however, the said four questions were deleted from evaluation and four marks to each of the candidates were awarded, the same, therefore, did not affect the result of the examination in any manner. The other irregularities pointed out were regarding ambiguity occurred in three questions on account of printing error, but said three questions were common to all, therefore, on merit no case for cancellation of examination was at all made out. It was also vehemently asserted that Vice-Chancellor having not cancelled the examination of the petitioners, had no jurisdiction to direct to conduct the entrance test again and the Controller of examination had no jurisdiction to treat aforesaid examination to have been cancelled by Vice-Chancellor.

15. On the other hand, learned counsel for the respondents has contended that the number of complaints having been received regarding the entrance test in question. The respondents were justified in appointing Inquiry Committee to look into the complaints, made by unsuccessful candidates. The Inquiry Committee after conducting enquiry submitted its report which clearly made out the case for cancellation of examination, the Vice-Chancellor relying upon the said enquiry report has rightly cancelled the said examination, therefore, there was no question of affording opportunity of hearing before passing the said orders. It was also submitted that the result of the said examination was declared under intimidation and on the basis of the said declaration, no right of admission accrued to the petitioners.

16. Learned counsel for intervenes has simply re-asserted the arguments raised

by the learned counsel for respondents Nos. 1 to 3.

17. I have considered the rival contentions made by the parties. It is apparent from the order of Rector as notified the Registrar of the University that complaints were made by unsuccessful candidates, on the basis of which the enquiry Committee was constituted, which! was required to look into the allegations made by them and to submit its report with specific recommendations. The Inquiry Committee recommended for revaluation of the answer books of the Candidates, who appeared in the said entrance test after taking legal opinion. Opinion of L.A. appears to have been "taken by the Vice-Chancellor. The L.A, did not record any reason for the opinion given by him, he simply said that since only result has been declared and admissions were till then not made, therefore, the decision of the re-evaluation/ scrapping of the examination or any other decision may be taken by the competent authority.

18. The legal advice given to the Vice Chancellor was apparently erroneous in as much as right to seek admission accrues to the successful candidates immediately on declaration of the result of the examination, and the result whereof can be cancelled only after following the procedure prescribed under the law and after affording an opportunity of hearing to the Candidates, who are likely to be affected by the order of cancellation if any.

19. Even, according to the legal opinion referred to above and the report submitted by the enquiry Committee the Vice Chancellor had to take decision for re-evaluation/scrapping of examination after applying his mind to the facts of the case and also wanted to deviate from the recommendation made by the enquiry Committee. The Vice Chancellor without recording any reason directed to conduct the entrance test again wholly arbitrarily.

20. No doubt while conducting the examination Vice Chancellor exercises administrative powers, but the moment objections are lodged or other disputes arise in respect of examination, which he is supposed to, decide, Vice-Chancellor assumes quasi judicial role rule audi alteram partem is at once attracted, which imposes upon him the duty to follow the rules of natural justice. A reference in this regard may be to the following cases, where Supreme Court has laid down the tests to find out whether a proceeding before an Authority or Tribunal is a quasi judicial proceeding:-

(i) Province of Bombay Vs. Kusaldas S. Advani and Others, . (ii) Shivji Nathubhai Vs. Union of India (UOI) and Others, ;

(ii) Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, .

21. It is, well settled in law that quasi judicial order must contain the reasons. Since the order passed by the Vice Chancellor does not contain reasons, therefore, the same is non est in law, the Vice Chancellor had no jurisdiction to issue direction to conduct the said examination of MD/MS (Ayurvedic) again

arbitrarily. Public Authorities must act fairly and reasonably without any bias and arbitrariness.

22. In *Rama Varma Bharathan Thampuram Vs. State of Kerala and Others*, , it was ruled as under by a Constitution Bench of Supreme Court (para 14 of AIR):

"The natural justice is obviously the first as this court has ruled in a shower of case specially in highlighting in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, . This court has gone to the extent of holding that the natural justice requires reasons to be written for conclusion made. In *Organo Chemicals Industries v. Union of India (AIR 1979 SC 1803)*, this court has held that absence of a right of appeal does not spell arbitrariness. It is further held in the same rulings that giving of reasons for conclusion is ordinarily important component of natural justice in quasi judicial tribunals."

23. The principles of natural justice are also applicable to Administrative orders, which affect adversely or take away the rights of others or involve civil consequences. A reference in this regard may be made to the decision of *Union of India and others Vs. E.G. Nambudiri*, , wherein it has been ruled by the Supreme Court as under (Para 7 of AIR):--

"It is true that the old distinction between judicial act and administrative act has withered away and the principles of natural justice are now applied even to administrative orders which involve civil consequences, as held by this court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, . What is a civil consequence has been answered by this Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , Krishna Iyer J. speaking for the Constitution Bench observed : (See p. 440 para 66).

"But what is a civil consequence, let us ask ourselves, by passing verbal booby -- traps? Civil Consequences" undoubtedly cover in fraction of not merely property or personal rights but of civil liberties material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that effects a citizen in his civil life, inflicts a civil consequence."

The purpose of the rules of natural justice is to prevent miscarriage of justice and it is no more in doubt that the principles of natural justice are applicable to administrative orders if such orders affect the right of a citizen. Arriving at the just decision is the aim of both quasi judicial as well as administrative enquiry, an unjust decision in an administrative enquiry may have more far-reaching reaching effect than decision in quasi judicial enquiry. Now, there is no doubt that the principles of natural justice are applicable even to administrative enquiries. See *A.K. Kraipak v. Union India (AIR 19780 SC 150)*."

24, A Full Bench of this Court in *Triambak Pati Tripathi Vs. The Board of High School and Intermediate Education, U.P., Allahabad*, , ruled as under (para 12):--

"A consideration of this authority lead us to the conclusion with the essential

principles of natural justice are to be observed by the authority dealing with the case in quasi judicial manner are as follows.

(i) the persons, whose right are to be affected must be given notice of the case or others, which he has to meet.

(ii) he must give an opportunity to make a representation and to explain the allegations made against him and to have his say in the matter.

(iii) Authority conducting the proceedings must not be biased and are in good faith."

25. In the aforesaid case, the question under consideration was with respect to the action to be taken against the students using unfair means in the examination. In the present case, not only the use of unfair means (copying), leaking of questions and lot of other allegations were made by unsuccessful candidates, therefore, petitioners and other candidates who were likely to be adversely affected by the orders to be passed on the basis of said complaints had to be afforded an opportunity of hearing or at least cogent reasons should have been recorded in support of the impugned order.

26. Other aspect of the matter is that the Vice Chancellor by his order dated 20-8-1995 did not cancel the examination or its result, but has arbitrarily without applying his mind to the facts of the case directed to hold the examination again.

27. As stated above, result of the examination was already declared, right to take admission accrued to the successful candidates they could not be deprived of the said right by holding examination again. The order passed by the Vice Chancellor is wholly illegal and without jurisdiction.

28. Next question to be considered is, whether under the facts and circumstances of the case and on the basis of facts found and recommendations made by the Inquiry Committee the result of the examination in question could be cancelled?

29. Four questions out of 180 questions were stated to be wrongly framed. The said questions were deleted from consideration and each one of the candidate, who appeared in the examination was awarded four marks, therefore, the result of the examination was not affected in any manner and none of the candidates appearing in the examination was adversely affected. Further in four questions, printing errors were detected but said errors were common to all. The successful and unsuccessful candidates attempted to answer the said questions, therefore, on account of printing error no body was prejudiced. The prejudice if any caused on account of said printing errors was equal to all. In view of the aforesaid discussion, no case for cancellation of examination was at all made out.

30. A reference in this regard may be made to recent decision of Supreme Court in Subhash Chandra Verma and others, etc. Vs. State of Bihar and others, etc., , where in similar circumstances, validity of examination was upheld and it was

observed as under (para 41 of AIR).

"No candidate was put to any disadvantage in awarding marks because of any discrepancy, ambiguity or duplicity. Moreover, there being no negative marking no disadvantage was caused to any candidate on this account."

31. Thus the orders dated 20-8-1995 and 23-8-1995 passed, by Vice Chancellor and Controller of examination referred to above are liable to be quashed.

32. Before I part with the case, I would like to observe that during the pendency of the present petition, the examination of M.D.I M. S. (Ayurved) course was conducted on 24-9-1995, which was permitted to be held by this court vide order dated 20-9-1995, but the answer books of the candidates were directed not to be evaluated. The respondents were also restrained from declaring the result. In view of the fact that the present petition is being allowed, no effect shall be given to the said examination and the same shall be ignored.

33. The writ petition succeeds and is allowed with costs. The order dated 20-8-1995 and 23-8-1995 and 23-8-1995 are quashed. It will, however, be open to the respondents to re-evaluate the answer books of the petitioners and other candidates, who have appeared in the entrance examination of M.D./ M.S. (Ayurved) for the year 1995-96, after taking opinion of the experts.

34. Order accordingly.