
(2002) 03 AHC CK 0031
In the Allahabad High Court
Case No : C.M.W.P. No. 9150 of 2001

Kumari Monica Kumar

APPELLANT

Vs

Chowdhury Charan Singh University, Meerut and Others

RESPONDENT

Date of Decision : 04-03-2002

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 21

Citation : (2002) 2 AWC 1096(2)

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : Hemant Kumar and P.P. Srivastava, for the Appellant; Anurag Khanna, A.K. Mishra and U.N. Sharma, for the Respondent

Final Decision : Disposed Of

Judgement

R.R. Yadav, J.—The petitioner moved an application bearing No. 83800 of 2001 with the following prayer :

"It is therefore, most respect fully prayed that this Hon"ble Court may graciously be pleased to allow the application and direct the opposite parties to declare the result of petitioner of M.B.B.S. Final Professional Part-I Examination, 2001 and the result of Scrutiny of Pharmacology of Second Professional Examination, 2000 at an early date and also permit the applicant to appear in the final year M.B.B.S. Part-11 commencing from 17.10.2000, otherwise applicant will suffer a great and irreparable loss and injury which cannot be compensated in any way."

Upon the aforesaid application. the learned single Judge of this Court passed an order on 19.9.2001 which is reproduced herein below :

"Since the advocates of this Court are on strike, the father of the petitioner Dr. Narendra Kumar appeared in person In support of this application. This Court vide its order dated 14th March, 2001, directed the respondents to permit the petitioner to appear in M.B.B.S. Final Professional Part-1 Examination, 2001 in which the petitioner was allowed to appear by the respondents, but the

respondents have neither declared the result of the petitioner of M.B.B.S. Final Professional Part-1 Examination, 2001, nor did the respondents declare the result of the scrutiny applied for by the petitioner for Pharmacology of Second Professional Examination, 2000. It is further stated that since the final year M.B.B.S. Part II examination is scheduled to commence from 17th October, 2001, the petitioner be permitted to appear in the said final year M.B.B.S. Part-II Examination Scheduled from 17th October, 2001.

In view of the observations made in the order dated 14th March, 2001 and the directions already issued, it is expedient in the interest of justice that the respondents be directed to declare the result of the petitioner of M.B.B.S, Final Professional Part-I Examination, 2001 and further respondents be directed to declare the result of the scrutiny of Pharmacology of Second Professional Examination, 2000 at the earliest. It is, therefore, directed that in view of order of this Court dated 14.3.2001. the respondents shall declare the result of the petitioner of M.B.B.S. Final Professional Part-I Examination, 2001 and the result of scrutiny of Pharmacology of Second Professional Examination. 2000, within a week from the date a certified copy of this order is produced before them and further respondents are directed to permit the petitioner to appear in the Final Year, M.B.B.S. Part-II Examination, 2001, scheduled to commence from 17th October, 2001, like any other student and respondents may declare the result of the same also, if there is no other legal impediment. No counter-affidavit has yet been filed by the respondents. Respondents are granted three weeks" further time to file counter-affidavit.

List immediately after the expiry of the aforesaid period. Office is directed to supply a certified copy of this order to the petitioner on payment of usual charges within twenty four hours."

2. A pointed question was asked to the learned counsel appearing on behalf of the respondents as to whether pursuant to the order dated 19.9.2001, the result of the petitioner of Pharmacology Second Professional Examination. 2000, was declared. It is stated by the learned counsel representing respondent No. 1 that as she failed, therefore, was no necessity to declare the result of the petitioner of Pharmacology Second Professional Examination, 2000. It is also submitted by the learned counsel for the petitioner that there is no provision for scrutiny, hence declaration of result on the basis of scrutiny was not possible. It is submitted that in the present case, no scrutiny was undertaken by the respondents.

3. Be that as it may, this Court after hearing the learned counsel for both the sides on 26.2.2002 directed the Principal, Medical College, Allahabad to send Head of the Department of Pharmacology of the Medical College, Allahabad to remain present in Court on 28.2.2002 for checking of the answer sheets of Pharmacology Second Professional Examination, 2000 of the petitioner. Pursuant to the order dated 26.2.2002, the Principal, Medical College, Allahabad sent Dr. K. U. Ansari, Head of Department of M. L. N. Medical College, Allahabad, who in presence of the Court, checked the answer-sheets of Pharmacology Second

Professional Examination, 2000 of the petitioner. The comments of Dr. K. U. Ansari were recorded after checking the answer sheets of Pharmacology Second Professional Examination 2000 of the petitioner, which is reproduced herein below for ready reference.

"I thoroughly checked the answer-book and my comments are as under :

1st Paper :

Question No. 1 is of 7 marks. The Examiner awarded 3-1/2 marks. In my opinion, 1 or 1-1/2 marks should have easily been awarded for answer, making total 5 marks.

Question No. 2 Is of 7 marks. In this also 2-1/2 marks are awarded. In my opinion 1-1/2 or 2 marks more should have been awarded, making total 4-1/2 marks.

Question No. 3 is of 8 marks consists of 4 parts, meaning thereby two marks for each part. The Examiner has awarded only two marks in the last part, so it is not clear whether 2 marks for last part attempted or two marks for all the four parts. In this also 1-1/2 marks should have been awarded for each part. So the total marks for this question should have been 6 instead of 2.

Question No. 4 is of 9 marks consisting of 3 parts, meaning thereby 3 marks for each part. In this the Examiner has awarded 4-1 /2 marks in the last. In my opinion, it does not require any change.

Question No. 5 is of 9 marks consisting of 3 parts, meaning thereby 3 marks for each part. The Examiner has awarded only 1-1/2 marks in the last part. It should have been at least 1 mark for two parts. The total marks in this question should be 3-1/2 marks.

IIInd Paper :

Question No. 1 is of 7 marks but the Examiner awarded 2-1/2 marks. In my opinion it should have been at least 4-1/2 marks.

Question No. 2 is of 7 marks but the Examiner awarded 3-1/2 marks, in my opinion it does not require any change.

Question No. 3 consists of four parts is of 8 marks, meaning thereby that 2 marks for each part. In this the Examiner has rightly awarded separate marks for each part. The student has done wrong all the four parts and the Examiner has awarded zero mark for each part. It does not require any alternation.

Question No. 4 Is of 9 marks consisting of 3 parts meaning thereby 3 marks for each part. The Examiner has awarded 4-1/2 marks in the last part. The marks should have been awarded separately for each part. In my opinion 1 or 1-1/2 marks may be added. In my opinion the student is entitled to be awarded 6 marks.

Question 5 is of 9 marks having 3 parts meaning thereby 3 marks for each part but the Examiner has awarded 4 marks in the last, therefore, in my opinion 1 more mark should be added making it 5 marks.

Therefore, the maximum marks obtained by the student is as under :

1st Paper 24 marks out of 40 marks	IInd Paper 19 marks out of 40 marks	
.....	Total 43 marks out of 80 marks	

Dr. K. U. Ansari

Head of Department of Pharmacology

M.L.N. Medical College, Allahabad

28.2.2002"

4. It is contended by the learned counsel appearing on behalf of the respondents that in view of the marks given to the petitioner in pharmacology 1st and IInd papers by Dr. K. U. Ansari, petitioner has obtained more than 50% marks and now she can be declared to be passed in the 1st and IInd papers of Pharmacology Second Professional Examination, 2000 but since there is no provision of scrutiny, hence her result cannot be declared. It is contended with equal vehemence by the learned counsel appearing on behalf of the petitioner that there is no statutory provision prohibiting checking or rechecking of the answer books of the petitioner, therefore, her result can be declared by this Court.

5. I have given my anxious thoughtful consideration to the rival contention raised at the Bar. It is held that where there is wrong, there must be remedy. This Court cannot afford to allow substantial justice either to escape or slide in the given case on mere technicalities as suggested by the learned counsel for respondents. In exercise of equitable jurisdiction under Article 226 of the Constitution, this Court is expected to advance Justice between the parties. It is to be imbibed that courts of law are not respected because they are capable to legalise injustice but Courts are expected to prevent Injustice between the parties.

6. It is apparent from the perusal of the answer-sheets of the petitioner that there are several questions in parts. In some of these questions, the examiner has rightly awarded separate marks for each part but in other similar questions, he has not done so for the reasons best known to him leading to grave injustice to the petitioner. I am of the view that the petitioner in the case in hand cannot be allowed to suffer due to act, omission and commission of the examiner. The checking done by Sri K.U. Ansari, Head of the Department of Pharmacology of M.L.N. Medical College, Allahabad in my presence inspires my confidence, which deserves to be given effect in the Interest of Justice and fair play.

7. Coming to the submissions made by the learned counsel for the respondent university to the effect that since there is no statutory provision for scrutiny and

reevaluation of answer-sheets of the petitioner, hence even if after checking, it is found that petitioner has passed Pharmacology Second Professional Examination, 2000, yet it is not possible to declare her result in the said examination. The aforesaid argument of the learned counsel for the respondent university is repelled for the reasons given hereinbelow.

8. It is to be imbibed that right to life includes the right to prosecute higher studies and professional courses to live a dignified life. Living a dignified life is integral part of right to life enshrined under Article 21 of the Constitution. Thus, the petitioner has fundamental right under Article 21 of the Constitution to complete her M.B.B.S. course and she can be deprived of her right to complete her M.B.B.S. course by respondent university only by adopting a procedure which can be said to be fair, just and reasonable. It is essential that the procedure prescribed for creating hurdle in completing of her M.B.B.S. course by respondent university must be just fair and reasonable. The procedure which is unjust, unfair and unreasonable in the case on hand attracts vice of unreasonableness enshrined under Article 14 of the Constitution, which strikes at arbitrariness in State action and its instrumentalities falling under Article 12 of the Constitution. Article 14 of the Constitution requires that the action of the State and Its instrumentalities must be based on some rational and relevant principle. The principle of reasonableness and rationality are essential elements of non-arbitrariness.

9. Indisputably, respondent university is an instrumentality of the State and it falls within Article 12 of the Constitution. Therefore. Article 14 applies to it with equal force as it is applicable to the State action and it cannot be permitted to act arbitrarily after making a law by way of statute, ordinance, Rules or regulations under the U. P. State Universities Act, 1973, which can be said to be arbitrary, unreasonable, attracting vice of Article 14 of the Constitution. As the respondent university cannot be permitted to act arbitrarily and unreasonably by making law in exercise of its power conferred under State Universities Act, similarly it cannot be permitted to act arbitrarily without making such law with regard to scrutiny and reevaluation of answer books of candidate prosecuting studies in M.B.B.S.

10. In view of the aforesaid facts and circumstances of the present case, it is ordered that the respondents shall declare the result of the petitioner of Pharmacology Second Professional Examination, 2000, forthwith to enable the petitioner to appear in the final year M.B.B.S. Part II Professional Examination, which is scheduled to commence from 6th March, 2002. The declaration of result of the petitioner M.B.B.S. Final Professional Part I Examination, 2001, depends upon the declaration of her result of Pharmacology Second Professional Examination, 2000, therefore, by corollary or reasons it should also be declared forthwith.

11. As discussed hereinabove, the respondents are also directed to declare the result of the petitioner M.B.B.S. Final Professional Part I Examination, 2001,

forthwith to enable her to appear in the final year M.B.B.S. Part II Professional Examination scheduled to commence from 6th March, 2002, which was withheld because, she was declared failed in Pharmacology Second Professional Examination, 2000.

12. With the aforesaid observations, the instant writ petition is finally disposed of at admission stage with a direction to the Vice-chancellor of Chaudhary Charan Singh University, Meerut, to consider with consultation of Head of Department of Pharmacology Department of the said university as to whether the examiner, who had awarded marks to the petitioner in Pharmacology Second Professional Examination, 2000. 1st and IInd papers be debarred to be made Examiner in future.

13. Dr. K. U. Ansari is present in the Court. The comments given by Dr. K. U. Ansari, Head of the Department of Pharmacology, M.L.N. Medical College, Allahabad, dated 28.2.2002 is made part of the record.

14. The answer sheets and the question papers 1st and IInd of Pharmacology Second Professional Examination, 2000, be returned to the learned counsel appearing on behalf of the university, respondent No. 1.

15. If urgent application for obtaining the certified copy of this order passed today is made, the office shall make it available on payment of usual charges expeditiously within 24 hours.