

(2013) 02 KAR CK 0103

In the Karnataka High Court

Case No : Writ Petition No"s. 49971-49972 of 2012 (EDN, MED-ADM) and W.P. No"s. 48424-48426 of 2012

Nilesh Kumar, Sonali Kumari

APPELLANT

Vs

State of Karnataka and Others
 Ankit Mittal, Shubam Singh Baloria and Mohammed Waseem Khan Vs Sri Devaraj URS Academy of Higher Education and Research Kolar

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226
University Grants Commission Act, 1956 — Section 3, 8

Citation : (2013) 3 AKR 75 : (2013) ILR (Kar) 1555

Hon'ble Judges : Dilip B. Bhosale, J;B. Manohar, J

Bench : Division Bench

Advocate : B.S. Aravinda Babu, for P1, Sri Sumanth Kumar Patil, Alongwith Jayakumar S. Patil, for P2 in W.P. Nos. 49971-49972/2012 EDN. MED-ADM, Sri Praveen R.J.S., in W.P. Nos. 48424-48426/2012 and Sri Dharshan and Pradeep C. Yadav, in W.P. No. 51151/2012, for the Appellant; M.C. Nagashree, HCGP for R1, Sri Madhusudan Naik for Sri K. Shashikiran Shetty for R3 and R4 in W.P.Nos. 49971-49972/2012 (EDN. MED-ADM), in W.P. Nos. 48424-48426/2012 and W.P. No. 51151/2012, for the Respondent

Final Decision : Dismissed

Judgement

Dilip B. Bhosale, J.—These six writ petitions, filed under Articles 226 of the Constitution of India, challenge the validity of the orders, all dated 29.11.12, passed by respondent No. 3-the Registrar, Sri Devaraj Urs Academy of Higher Education and Research (for short "the University") whereby all the petitioners have been dismissed from the course of MBBS to which they were admitted in respondent No. 4 - college, affiliated to the University, and directed to vacate the rooms allotted to them in the hostel on or before 3rd December 2012. The order passed in case of one of the petitioners namely Nilesh Kumar (WP 49971/12) reads as follows:

It has been confirmed through investigations of Biometric analyses, Photo identification and Verification of Signature that you are guilty of impersonation and cheating the university at the entrance examination (SDUAHER-AIUGMET-2012) for undergraduate (MBBS) course held on 22.4.2012 and also in the counselling held on 29.06.2012. By this fraudulent act of yours, you have managed to secure admission to the MBBS course at Sri Devaraj Urs Medical College, the constituent institution of the university for the academic year 2012-13.

Hence, you are dismissed from this course and the institution. You are further informed that, you are liable to pay the remaining tuition fees for the entire MBBS course, as the university could not admit any other student in your place.

You are also informed to vacate the room allotted to you in the hostel on or before 3rd December 2012.

Registrar.

Respondent No. 3 is a deemed University recognised u/s 3 of the University Grants Commission Act, 1956. Respondent No. 4-Sri Devraj Urs Medical College (for short "the college") is affiliated to respondent No. 3-University. The college was established in 1986 and it has total intake of 150 students for MBBS course. After the respondent No. 3-University was declared deemed University, vide Notification dated 25.5.2007, they started conducting Entrance Test for admitting students for MBBS course run by the College.

2. For the admission to undergraduate (MBBS) course, for the academic year 2012-13, respondent No. 3 Sri Devaraj Urs Academy of Higher Education and Research, comprising Sri Devaraj Urs Medical College (respondent No. 4) published a brochure (SDUAHER-AIUGMET-2012) dated 28.2.2012 and the Notification dated 21.05.2012, containing instructions and details of method and manner of conducting entrance test and counselling process indicating verification at different levels (for short "the brochure" and "the notification"). The brochure/Notification, gave calendar of events for the Under Graduate Entrance Test. As per the calendar, for the entrance test they started issuing online application forms on 8.3.12. The entrance test was conducted on 22.4.12 between 9.00 a.m. to 12.00 noon. The result of the test was declared on 8.5.12 and on 23.5.12 they announce rank list. As per the instructions first round of counselling took place on 29.6.12 and on the same day, insofar as the petitioners are concerned, admission process was completed and they were admitted. The petitioners started attending classes from 1st August 2012.

3. It appears that about 1928 application forms from all over the country were received for seeking admission to first year MBBS course and about 662 were declared as eligible candidates to appear for the seat selection and counselling process. Out of 662 eligible candidates, only 288 candidates registered for counselling and seat selection process. In other words, out of 662 candidates, 288 students cleared the entrance test and their names were notified on 21.5.12

in the rank list and they were registered for counselling, which held on 29.6.12. After two rounds of counselling held on 29.6.12 and 25.7.12, finally 150 candidates were selected wherein 127 seats were filled through seat selection and counselling process and remaining 23 seats were filled up inter-se-merit by Management/NRI/Foreign category.

4. Since the petitioners have been dismissed from the course of MBBS on the ground of "impersonation", it would be necessary to have a glance at relevant instructions and details of method and manner of conduct of entrance test, counselling and admission to the 1st MBBS, as they appear in the brochure and the notification. Section 8 of the brochure deals with Biometrics Verification to ensure fairness to the merit students. Section 8, reads thus:

8. BIOMETRICS VERIFICATION:

To ensure fairness to the merit students, it is planned to use Biometrics at various stages of Sduaher-Aiugment-2012.

Candidates intending to take the Sduaher-Aiugment-2012 are required to undergo biometric verification, (i) During the test (ii) during counselling for seat selection and (iii) at the college level, during the admission process to eliminate fraudulent attempts.

Sri Devaraj URS Academy of Higher Education & Research reserves the right to change (or) reset the Biometric Verification parameters at any time during the examination and seat selection process. Biometric mismatch at any stage will automatically result in disqualification of the candidate and he/she will not be permitted to participate in any further process of seat selection and admission to MBBS course. Further, impostors are liable for criminal prosecution.

(emphasis supplied)

4.1. Section 6.3.4 provides for grounds for dismissal from the test. One of the grounds for dismissal, as provided in this Section is "an attempt to take the test on behalf of some one else (Impersonation)". We are not concerned with other grounds for dismissal from the test.

4.2. In the Notification dated 21.5.12 regarding counselling announcement and instructions to the candidates for participation in counselling and seat selection process, one of the instructions to the candidates by way of Note on page 3 of the Notification states that "any deficiency/discrepancy concerning the documents which candidates were liable to produce on the date of counselling will be placed before the Advisory Committee for the purpose of counselling and seat selection process for the year 2012-13 and the decision of the Committee of the Academy will be final and binding."

4.3. Paragraph 4 of the notification provides for the counselling and seat selection process, which reads thus:

The entire counselling and seat selection process in The Academy is controlled by

a software system right from the stage of registration of the candidate to the stage of printing of Allotment letter. The highly sophisticated software used in the process can control the registration; provide data for verification of the original documents, biometric verification and to take care of the selection of seats by the candidates in the order of merit, payment of fees and generation of Allotment letter. A candidate who has the better rank gets the opportunity to select a seat first and a candidate who has the rank next to him cannot bypass the higher merited candidate. He will have to wait for his turn at the seat selection terminal. A dynamic display of availability of seats will be on the screen. The moment a seat is selected by the candidate, the computer will show one seat less against the total number of seats available.

(emphasis supplied)

4.4. Clause (b) of paragraph 4 provides for biometric verification of the candidate. It states that the candidate who has completed the biometric verification successfully will be registered and allowed to take part in the counselling and seat selection process.

4.5. Paragraph 5 of the notification provides for grounds for rejection, which reads thus:

1. If on verification, the documents of the candidate are not found to be in order or if there is any falsification of documents or if the Advisory Committee is not convinced about the documents submitted at the verification counter, his/her candidature will be rejected.
2. If there is a mismatch of photo, finger impression, signature of the candidate or if there is a reasonable doubt by the Advisory Committee that there is malicious intent by the candidate to impersonate, such candidate/s will be debarred from counselling and seat selection process and legal proceedings may be initiated.
3. If the candidate fails to produce the prescribed tuition fee and miscellaneous fees in the form of Demand Draft, his/her candidature will be rejected.
4. Candidate must be physically present and any attempt for proxy registration shall be rejected.
5. In the present case, during admission process, the alleged impersonation was not detected. After the admission process was completed and the appellants started attending classes from 1.8.12, respondent No. 4-College appointed a "Admission Review Committee" (for short "the Committee") vide Notification dated 6.8.12 consisting of Principal, Vice Principal, Professor & HOD (physiology), Student Welfare Officer, and Warden to verify all documents of the students admitted to 1st year MBBS course for the Academic year 2012-13. Dr. M.B. Sanikop, Principal, was appointed as a Chairman of the said Committee. The Committee was appointed to scrutinise the credentials of the documents submitted by the students as per the list sent by the respondents. The

Committee, accordingly, scrutinised documents of all the students furnished to respondent No. 3-University consisting of photographs and signatures on Test Admission Ticket (TAT) card. Rank card and allotment letter etc., The Committee conducted its meeting on 6.8.12 and furnished a list of 27 students out of 150 after being suspected as fraudulent admissions.

6. It appears, during the scrutiny, the committee found discrepancies in the photographs and signatures of 27 students. It is in this backdrop, the respondent University and College claim that they followed the due procedure to verify whether there was Impersonation by any of those 27 students. The University and the College (respondents-3 and 4), in their statement of objections, in paragraphs 8 to 13, have stated as to what procedure they adopted and how they proceeded to conduct enquiry against these students. It would be necessary to reproduce paragraphs 8 to 13 in the statement of objections, filed in W.P.No. 49971-72/12 to know their case and to find out what was the procedure followed by them before taking the impugned decision. Paragraphs 8-13 read thus:

8. Thereafter the suspected 27 students were individually called and their credentials were physically verified with respect to photographs and signatures and compared the same with the TAT card, rank card, allotment letter and application forms of the college. During the individual verification process, it was found that 4 students namely Mr. Rahul Mondal, Dipyang Ghoshal, Vivekananda Raj and Abhishek Kumar surrendered the seats unable to justify the discrepancies and 3 students, namely Akurati Sridhar, Nidhi Ranjay and Kaligithi Uday Kiran cleared the verification test and were found to be genuine and were cleared from the charges among the 27 students. The copy of the list of students after surrendering the seats and students clearing verification process is hereby produced as Annexure R21.

9. It is submitted that, the admission review committee held meeting on 31.8.12 and procured the entire record including the forefinger impressions and signatures of the remaining 20 suspected students, including the invigilation dairy, wherein the student had affixed their signatures and left hand forefinger impression during the entrance test and other original records and compared the same, wherein four students were found to be genuine; namely Abdul Rehman, Katukota Bhavya Chowdary, Nitish Kumar Bharadwaj and Rahu. G were cleared with the charges. The copy of the proceedings of meeting dated 31.8.12 along with a list of list of 16 students suspected of impersonations are hereby produced as Annexure-R22 and R23.

10. It is submitted that, the respondent No. 4 college continued the verification process with respect to 16 students and were subjected to further verification by an external forensic expert as it was difficult for the committee to verify and compare the forefinger impression and signatures scientifically. As such, the respondent No. 4 college after being authorized by the admission review committee to scientifically verify the genuineness of the credentials of the students engaged the services of expert forensic agency by name "PHANEENDAR

B.N." on 05.09.2012 a reputed forensic documents and finger prints expert. It is submitted that out of 16 students only 10 students were subjected to verification before the forensic expert as the other remaining 6 students including the petitioner No. 1 remained absent till 15.09.2012. The forensic document and fingerprint expert agency furnished its report with respect to 10 students wherein 2 students namely Suman Anand and Sambasiva Rao reports were in positive as their signatures and forefinger impression were found to be genuine and 8 students" report was negative as there was discrepancy either in their signatures or in forging impressions. It is submitted that, the petitioner no. 2 was one among the student, whose signature and forefinger impression found to be indifferent and there was gross variation in the signature. The copy of the report dated 10.09.2012 issued by the forensic document and fingerprint expert agency is hereby produced as Annexure R24.

11. Thereafter the respondent No. 4 medical college on 13.9.2012 held a meeting and issued show cause notices in favour of all the 8 students having negative report and also to their parents; directing them to meet personally and defend themselves/explain their case. Thereafter on 15.09.2012 the petitioner no. 1 approached respondent no. 4 Medical college and showed his willingness to undergo the verification test by the forensic document and finger print expert, pursuant to which the 1st petitioner underwent the verification test and the forensic document and finger print expert after examining have furnish its report on 17.09.2012 wherein the signatures and the forefinger impression were found to be indifferent and there was gross variation in the signature. The copies of the proceedings of meeting dated 13.09.2012 and the report dated 17.09.2012 issued by forensic document and finger print expert agency of petitioner no. 1 is hereby produced as Annexure R25 and R26.

12. It is submitted that the respondent no. 4 college after receiving the report from the expert agency, called the petitioner no. 1 on 21.09.2012 and showed him the report and directed him to bring his parents and also to give detailed explanation in his case. Thereafter the respondent no. 4 college on 22.09.2012 also issued a show-cause notice and directed the petitioner no. 1 to give the explanation in writing before 24.09.2012 failing which, the petitioner no. 1 would be restrained from attending classes. The petitioner no. 1 came along with his elder brother and the petitioner no. 2 came along with her mother and issued reply dated 24.09.2012 addressed to respondent no. 4 Medical college. (Annexure F1).

13. It is submitted that the respondent no. 4 Medical College was not satisfied by the explanation rendered by the petitioners and, therefore on various occasion called them personally and directed them to give sufficient and detail explanation on or before 29.09.2012 as 30.09.2012 is the last date to admit the students to M.B.B.S. Course for the academic year 2012-13, and despite the same the petitioners failed to give detailed explanation, showing their bona-fide and orally informed that they will bring their parents to meet personally and sought for

extension of time as their parents are from out of state. In view of the same, the college, respondent no. 3 and 4 extended the time to students as requested. It is submitted that, the respondent no. 4 college in the said circumstances, on 08.10.2012 sent the list of all 150 students including the petitioners for approval of admission as it was the last date as per the Medical Council of India Regulations and as the petitioner no. 4 college had not yet come to any conclusion, in view of the extension of time sought for by the students for rendering bonafide explanation.

(emphasis supplied)

6.1. The case of respondent Nos. 3 and 4 against all the petitioners is similar. They claim that, after following the procedure that is reflected in the statement of objections, and as claimed by the University and College, after affording an opportunity of being heard to the students and / or their parents, the impugned orders were issued by the university dismissing them from the 1st year MBBS course and directing them to vacate the rooms in the hostel.

7. We have heard learned counsel for the parties at considerable length and with their assistance gone through the entire records placed before us. Mr. Patil, learned senior advocate advanced leading arguments on behalf of the petitioners in W.P.No. 49971-72/2012, learned counsel appearing for the petitioners in other writ petitions, after adopting the submissions advanced by Mr. Patil, made brief submissions to which we will make reference little later.

7.1 Mr. Patil, learned Senior Advocate at the outset invited our attention to the brochure and the notification and submitted that till the admission process was completed and the petitioners started attending college, at no stage of the admission process any objection/doubt was raised against the petitioners by the respondents and therefore, it was not open for them to constitute the committee (Admission Review Committee) and examine the documents of all candidates, in particular the petitioners. The procedure that was adopted and followed was not consistent with the procedure mentioned in the brochure and the notification. It was further submitted that the entire counseling and seat selection process was controlled, as claimed by the respondents in the notification, by a software system right from the stage of registration of candidates to the stage of printing of allotment letters. If at all, there was impersonation, as alleged, through bio-metric systems, they ought to have detected the same at the stage of counseling itself, and since that did not happen, it was not open for the respondents to appoint the committee to examine the documents of the petitioners and after obtaining their specimen signatures and fore-finger impressions/prints, seek expert's opinion. He further submitted that while following the procedure, invented by respondents 3 and 4, they did not follow principles of natural justice, he submitted that at no point of time, the petitioners were told, for what purpose their specimen signatures and forefinger prints were obtained by the college authorities. After obtaining a report of the Expert, it was not made available to the petitioners. The petitioners being teenagers even did not understand the

meaning and consequences of the enquiry that was conducted by the college authorities and therefore, on this ground alone, the impugned orders deserve to be set aside. It was then contended that there was absolutely nothing in the brochure and the notification empowering the college authorities or the University to appoint the Committee, after completion of seat selection and admission process and therefore, formation of such Committee itself was illegal. In short, it was contended that principles of natural justice were not observed while conducting the enquiry and passing the impugned order. It was submitted that even the show cause notice was not clear insofar as allegations on the basis of which, the impugned orders were passed. The show cause notice according to learned counsel for the parties was issued by the Principal, whereas the order is passed by the University which was also not proper and legal.

7.2 Mr. Pradeep Yadav, learned counsel appearing for the petitioner in W.P.No. 51151/2012 submitted that the specimen signatures/forefinger impression of the petitioners, which were obtained by the college authorities, in fact were not sent to finger print/hand writing Expert. In other words, he submitted that it is not clear from the records that the specimen signatures and the fore-finger print, as appear in the report of the expert, are the same which were obtained by the college authorities before forwarding them for examination. Apart from Mr. Pradeep Yadav, no other advocate, appearing for the petitioners, raised such doubt.

7.3 Mr. Sumanth, learned counsel appearing for the petitioner in W.P.No. 49972/2012, in rejoinder, placed reliance upon the judgments of the Hon'ble Supreme Court in support of their contention that the principles of natural justice were not followed by respondents 3 and 4 before passing the impugned order. He placed reliance upon the following judgments of the Supreme Court. State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, A.K. Kraipak and Others Vs. Union of India (UOI) and Others, and S.L. Kapoor Vs. Jagmohan and Others,

7.4 Mr. Patil, learned Senior Counsel, in rejoinder, submitted that the orders impugned in the present petitions may be set aside and the matters be remanded to the College authorities/University for fresh enquiry with direction to afford an opportunity of being heard to the petitioners.

8. Before we advert to the merits of the case and the questions raised before us, we deem it appropriate to mention that none of the petitioners filed affidavit-in-rejoinder to the statement of objections filed on behalf of respondents 3 and 4. At no stage, after they received the statement of objections, they even expressed desire to file reply-in-rejoinder. The statements made in the statement of objections, thus, remained un-controverted. Moreover, except the petitioner in W.P.no. 51151/2012, none of the petitioners raised any doubt about the report of the finger print/handwriting expert. It would not be incorrect if we observe that except the petitioner in W.P.No. 51151/2012, no other petitioner raised any doubt about the report of the Finger Print/Hand Writing Expert. The only contention advanced on behalf of the petitioners was that the report of the

Expert was not made available to the petitioners and therefore, they did not get proper/sufficient opportunity to defend themselves.

9. Since, Mr. Yadav, learned counsel appearing for the petitioner in W.P.No. 51151/2012 had raised a doubt about the report, the entire record was directed to be kept ready for our perusal and also for the perusal of learned counsel for the petitioners. He had argued that he was not sure whether the specimen signature/fore-finger print, which was forwarded to the Expert, was the same one that was obtained from the petitioners. We perused the admitted fingerprint and the signature on the original application form submitted by the petitioner. The petitioner was present in the court when we examined the original application and his finger print and signature thereon. Apart from the fact that he could not have denied his fore-finger impression/print and the signature on the original application form sent by him, he admitted his signature and finger print on the original application form. The petitioner or his advocate did not raise any doubt about the signature/finger print obtained at the time of test (Entrance Test), when those were shown to him as his signature and finger prints. His advocate also had a look at it. Mr. Yadav, did not and could not dispute the finger print and the signature that was obtained at the time of Entrance test. Thereafter, we compared the admitted signature and finger print with the questioned signature and the fingerprint. We also perused the enlarged print of the specimen signature and the finger print submitted along with the report of Expert and we found that the admitted finger print/signature on the original application form and the questioned finger print/signature taken at the time of the test were not matching at all. Even with the naked eyes, we could see that they were not matching. This simply indicated that the person who appeared for the entrance test and the applicant/petitioner was not one and the same. We therefore, requested Mr. Yadav learned advocate appearing for the petitioner in W.P.No. 51151/2012 also to see both together and he, in all fairness, admitted that they do not match. Though none of the other advocates appearing for the petitioners raised such doubt, still we verified from the original records and the report of the expert in respect of the other petitioners. We did not find any reason, nor learned advocates for the petitioners, could point out any infirmity in the report so as to discard the same. Even we could notice difference between the finger prints/signatures obtained at the time of test and the admitted finger prints/signatures of the petitioners. We also noticed difference after having took at the enlarged prints of the signatures/finger prints of the petitioners. It is against this backdrop, we would now like to examine the submissions advanced by learned counsel for the parties.

10. Before we proceed further, it would advantageous to have a look at the judgments, wherein the Supreme Court has considered as to how principles of natural justice should be applied by the Courts in cases, such as one before us. The Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and Another, while dealing with the principle of *Audi alteram partem*-that no one should be condemned unheard, observed that it is a part of the rule of natural justice. The

Supreme Court further observed that "whenever a complaint is made before a Court that some principle of the natural justice had been contravened, the Court has to decide whether observance of that rule was necessary for just decision on the facts of the case."

10.1 The Supreme Court in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, after dealing with the principle of natural justice observed that "non-furnishing of copy of the Enquiry report to the dismissed employee cannot ipso facto result in setting aside the dismissal order. The Court can set aside order of punishment only after it comes to the conclusion that furnishing of the report would have made a difference in the result of the case."

10.2 In *Union of India (UOI) and Others Vs. Alok Kumar*, the Supreme Court in paragraph 85 has observed thus:

85. The doctrine of defendant facto prejudice has been applied both in English as well as in Indian law. To frustrate departmental enquiries on a hyper-technical approach has not found favour with the courts in the recent times. In *S.L. Kapoor V/S. Jagmohan*, a three-Judge Bench of this Court while following the principle in *Ridge V. Baldwin* stated that if upon admitted or indisputable facts only one conclusion was possible, then in such a case that principle of natural justice was in itself prejudice would not apply. Thus, every case would have to be examined on its own merits.

(emphasis supplied)

10.3 In *K.L. Tripathi Vs. State Bank of India and Others*, the Supreme Court observed thus:

Wade in his *Administrative Law*, Fifth Edition at pages 472-475 has observed that it is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject-matter, the application of principles of natural justice, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural must depend on the facts and the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.

(emphasis supplied)

10.4 In *H.C. Sarin Vs. Union of India (UOI) and Others*, the Supreme Court observed that "the rules of natural justice must not be stretched too far. Only too often, the people who have done wrong seek to invoke the rules of natural justice so as to avoid the consequences. The Supreme Court in that case after having appreciated facts and circumstances of the case, came to the conclusion that no principle of natural justice was violated.

10.5 In *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, the Supreme Court observed as under:

Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical or fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt-that is the conscience of the matter.

(emphasis supplied)

10.6 In *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, while dealing with the grievance regarding breach of principles of natural justice, the Supreme Court gave full opportunity in the Court and in paragraph 51 of the judgment observed that "the opportunity which was denied by the Commissioner was granted by us in an ample measure, both sides having made their contentions elaborately on facts as well as on law. Having considered those contentions, we are of the opinion that the Commissioner was justified in directing the removal of the encroachments committee by the petitioners on pavements, footpaths or accessory roads".

10.7 In *S.L. Kapoor v/s. Jagmohan and Others* -(supra) the Supreme Court observed that "we do not suggest that the opportunity need be a "double opportunity" i.e. one opportunity on the factual allegation and another on the proposed penalty. Both may be rolled into one."

10.8 This Court in *Sri. Vidya Manohara Theertha Samigalu Peethadipathy, Vysaraja Mutt (Sosale) v/s. State of Karnataka and Others* in W.P.No. 17370 & 17391 of 2012 decided on 2nd day of January 2013 in paragraph 9 and 9.1 observed thus:

9. The principle that no one shall be condemned unheard is a part of the rule of natural justice. If the rule is to be applied, there can be no distinction between a judicial/quasi judicial function and administrative function. The aim is to arrive at a just decision. The Courts can set aside orders passed without issuing show cause notice, only if it comes to the conclusion that issuance of the show cause notice would have made a difference in the result of the case before it.

9.1. The person/litigant should not be allowed to invoke the rule of natural justice so as to avoid the consequences of the order. If the Court after having appreciated all facts and circumstances of the case, comes to the conclusion that no prejudice whatsoever has been caused by not issuing show cause notice or issuance thereof would not have made a difference in the result, then in such a case the rule of natural justice would not apply. Thus, every case would have to

be examined on its own merits. The Courts can neither be finical nor fanatical, but should be flexible yet firm while considering the rule of natural justice.

(emphasis supplied)

10.9 We would also like to have a look at the judgments of the Supreme Court relied upon by the learned counsel for the petitioners in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, The Supreme Court, in this case, observed that "the authority, which conduct an enquiry, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose, the person against whom an enquiry is held must be informed of the case he is called upon to meet and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its authorities."

10.10. In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, the Supreme Court observed that "the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice". It is further observed that "no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Then the Supreme Court after referring to its judgment reported in *Suresh Koshy George Vs. University of Kerala and Others*, observed that "what particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose.

10.11 The judgment of S.L. Kapoor(*supra*) was also relied upon in support of the contention that in the show cause notice, before taking action, the University ought to have mentioned the proposed action and since they did not do so, it was not open for them to take the impugned action.

11. In the backdrop of the law laid down by the Supreme Court and the discussion/observations made in the foregoing paragraphs we would like to examine the case further. It is true that in the brochure and in the notification, it was made clear by the respondents that to ensure fairness to the meritorious students, they planned to use bio-metric verification at various stages of seat selection and admission to under Graduate (MBBS) for the academic year 2012-13. From perusal of Section 8 in the brochure, it is clear that the candidates intending to take the test were required to undergo bio-metric verification during the test, during counseling for seat selection, and at the college level, during the admission process to eliminate fraudulent attempts.

Similarly, in paragraph 4 of the notification dated 21-5-2012 they further made it clear that the entire counseling and seat selection process in the Academy would be controlled by a software system right from the stage of registration of the candidate to the stage of printing of Allotment letters. It was further mentioned in paragraph 4 that the highly sophisticated software would be used in the process to control the registration; provide data for verification of the original documents, bio-metric verification and to take care of the selection of seats in the order of merit, payment of fees and generation of Allotment letter.

12. It is against this backdrop, the submission of learned counsel for the petitioners initially impressed us as to why the alleged impersonation was not detected at the very inception i.e. at the time of counseling and that the constitution of the Committee after selection and admission of the petitioner was wrong and illegal. Having regard to Section 8 and the instructions in the Notification we find ourselves in agreement that had digital fore-finger impressions/ prints of the candidates taken by the respondents during the test, they definitely could have detected the impersonation at the stage of counselling itself when again digital impressions/prints were taken. The software would have instantly shown "not matching" at that stage. The question why the collage/ university did not do so or followed the procedure as claimed by them in the brochure and the notification, in our opinion, remained unexplained / unanswered. To this, the only reply of respondents 3 and 4 was that though it was mentioned in the brochure and in the notification that there will be bio-metric verification during the test, during counseling and at the college level during the admission process, in fact, they obtained digital fore-finger print for the first and the last time during counseling. According to the respondents the digital fore-finger prints/impressions of the candidates were obtained only during the counseling and at all other levels/stages they obtained finger prints/impressions with the ink pad on paper. This has not been denied or disputed by the petitioners. That appears to be the reason as to why at the stage of counseling the impersonation was not detected.

13. The college authority and the university have not offered any satisfactory explanation as to why digital forefinger print was not obtained at the stage of entrance test; and all subsequent levels/stages though it was made clear in the brochure and the notification that the seat selection process would be controlled by software system right from the stage of registration of candidates to the stage of printing of allotment letters. Apart from the fact that there is no satisfactory explanation offered by the University/college, we find their conduct irresponsible. The manner in which the entire seat selection and admission process was conducted/handled by respondent nos. 3 & 4, in our opinion, deserve to be deprecated. If the college authorities had followed the biometric verification as stated/claimed by them in the brochure and in the notification, perhaps at the stage of counseling itself they could have noticed that the persons who appeared for the entrance test and the candidates who appeared for counseling were not one and the same. In other words, they could have noticed impersonation at the

very inception.

14. The conduct of educational institutions in conducting admission process, starting with an entrance test till allotment of seat, to a course like MBBS should not only be transparent but it should appear transparent and honest. The procedure that they state in the brochure and /or notification, they should follow the same scrupulously so as to avoid admission to undeserving candidates or the candidates who indulge in malpractice and go to the extent of impersonation. In our opinion, in the field of education if students go to the extent of impersonation, where the essence of an examination is that the worth of every person is appraised without any assistance from an outside source, such malpractice should not be tolerated.

15. It is true that there is no provision either in the brochure or in the notification to appoint a Committee to conduct an enquiry in the manner in which it was done. In spite thereof, having regard to the nature of allegation, we thought it fit to examine the same, since, we are of the opinion, that if the allegation of impersonation is correct and stands proved against the petitioners, they cannot and should not be allowed to continue the course of MBBS.

16. It is the specific case of respondents 3 and 4 that the petitioners did not appear for the entrance test and some other persons in their place gave a test, and therefore, the signatures and the finger prints obtained at the stage of entrance test did not match with the admitted signature and finger prints. It is also stated that the office staff, at the time of admission at college level noticed variations in the signatures and photographs of some students and when they brought it to the notice of the college authorities, the committee was constituted to verify the documents of all the students. We are of the opinion that, we need not go into the reasons as to what prompted the college authorities and the University to constitute the committee. The fact remains that the Committee was constituted to go through the documents of all the candidates including the petitioners, and it noticed variation in the signatures and the finger prints of 27 students. Therefore, they followed the procedure as stated in paragraphs 8 to 13 of the statement of objections, reproduced in the earlier part of the judgment. We have, as stated earlier, gone through the report of the Hand Writing/Finger Print Expert and found that the result in respect of the petitioners in the negative. In other words, the impressions/fingerprints and the signatures of the petitioners obtained at the stage of entrance test did not match/tally with the admitted fingerprints/signatures on their application forms or obtained subsequently as specimen.

17. The petitioner in W.P.No. 49972/2012 - Sonali Kumari, insofar as her fore-fingerprint is concerned, it was submitted that the Expert has opined "probable to be negative". Such opinion was expressed only in case of Sonali. Insofar as other petitioners are concerned, the expert gave firm opinion. Therefore, we have perused the enlarged admitted signature of Sonali Kumari with the original as well as enlarged signature (questioned), obtained at the time of entrance test.

The result of the Hand Writing Expert clearly show that the signatures do not match. We would like to reproduce the reasons records by Hand Writing Expert for stating so, which read thus:

17.1 We have also perused the enlarged admitted signature of the other petitioners and the questioned signatures and even we found that they do not match at all or that they are not made by the same person.

18. It is against this backdrop we find no substance in the submission advanced by the learned counsel for the parties that non furnishing of the reports of the expert caused serious prejudice to the petitioners. Merely because the Expert's report was not made available would not ipso facto result in setting aside the dismissal order. We are so observing, in view of the fact that neither the specimen signatures obtained by the college nor the questioned signatures, and so also the fingerprints were disputed by any of the petitioners at any stage, except the petitioner in W.P.No. 51151/2012. That apart, the respondents have also stated in their statement of objections that a show cause notice was issued to each of the petitioners, after the report of the finger print/hand writing expert was received asking them to furnish their explanation. They were also asked to bring their parents for the meeting. The petitioners and the parents who appeared before the College authorities were shown the Expert's report.

18.1 We would like to make reference to the show cause notice issued to one of the petitioners. The notice dated 22-9-2012 issued to Nilesh Kumar reads thus:

You were called to my office on 21-09-2012 at 4:00 P.M. to seek some clarification about your bonafide. I have explained to you that the finger print impression do not tally with other finger impression, i.e., the finger impression which was taken at the time of entrance examination does not tally with the finger impression which was obtained from you, by the Forensic Documents and Finger Prints Expert.

While you appeared for the examination, you have given address C/o. Shivananda Swamy, Near Manjunatha College, Saraswathi Nagar, Davanagere-577004 and you have opted the Chennai examination center and when you got admitted, the address you have given is S/o. Ganesh Prasad Yadav, At-Dinapatti Parariya, Via + Dist. Madhepura, Bihar - 852113. All these above discrepancies gives us doubts about your bonafidy. Please give your explanation in writing on or before 24th September 2012, failing which you will not be permitted to enter the classes and your case will be referred to police for verification.

18.2 His reply to the notice dated 24-09-2012 (Annexure-F1) reads thus:

I humbly beg to state that I have been suffering from great mental trauma and agony due to the unnecessary witch hunting that has been launched against me by the college administration on the question and pretext of my bonafide.

I have already explained to you sir, during the very beginning of this whole

episode that there is absolutely no question of my doubtful bona fide. I have not taken any recourse to unfair means to seek admission to this college as is being tried to be established by the college administration with the help of so called forensic experts etc. I have to state my explanation regarding the above allegation and the question of my address, and the alleged discrepancies in the same as under:

1. That I totally disagree with the allegation and deny the same regarding my finger impression not matching with the one taken at the time of entrance examination etc. In fact all my finger impressions were taken on plain paper and that may have been the reason behind the same. In any case I deny that allegation and I seriously doubt that I am being implicated by the administration for the reasons best known to them.

2. That regarding my address at Davanagere, I have to state that it is the address of my own elder brother Dr. Pankaj Kumar, who is studying there at the medical college and has passed out recently. The given address i.e. C/O Shivanand Swami, is the address of the land lord of the house where my brother at present resides. However, while I have used the above said address at the time of my entrance examination and opted for the Chennai centre is merely due to the reason that my cousin brother lives at Chennai and I have given the same centre for the entrance examination. During the same period my own brother was at home in Bihar at the parental address i.e. c/o. Ganesh Prasad Yadav at Po-Dinapatti, Pararia, via and Dist. Madhepura, Bihar-852113, it is stated that this above said address is my permanent address and I have given the same at the time of my admission to the college.

Therefore, there is no question of discrepancies in my any information given as such. Thus, any conclusion to the contrary regarding my bonafide is a mere figment of imagination and part of a pre-planned tirade, and drive out campaign against me for ulterior motives. At this stage where my classes have started and I have been given admission and accommodation in the hostel after verification and proper counseling earlier, such a conduct by the college is unjustified and unacceptable.

I am a very poor student and my whole career is ahead of me and it would be ruined if I am implicated falsely and tortured in such a manner. Therefore, I request you Sir, to kindly allow me to continue in my course of study in the light of my above explanation and my true bona fide. I shall be grateful for your kindness.

18.3 We would also like to make reference to the show cause notice issued to Sonali Kumari, the petitioner in W.P.No. 49972/2012 and her reply. The show cause notice issued to Sonali Kumari dated 11-9-2012 reads thus:

Your son/daughter Miss. Sonali Kumari is admitted to First year MBBS course for the year 2012-13 on 1st August 2012 at Sri. Devaraj Urs Medical College, Tamaka, Kolar through entrance examination conducted by Sri. Devaraj Urs

Academy of Higher Education & Research, Kolar.

In this regard you have to come and meet me personally on 17th September 2012. Treat this as urgent matter on priority basis.

18.4 And her reply to the said notice dated 17-09-2012 reads thus:

Most humbly and respectfully I declare that my ward had appeared at the examination test myself. No one has appeared in her behalf. My ward's signature, thumb print etc., are matched.

If any thing will be happen wrong, I will be responsible for it.

(emphasis supplied)

18.5 Respondents 3 and 4 have also placed on record along with their statement of objections, Annexure-R.28 dated 26-11-2012 asking the petitioners to remain present before the competent authorities along with their parents. All the petitioners have signed in acknowledgment of the said letter. The contents of the letter reads thus:

The following students were called upon and they were briefed about their fraudulent way of admission to the first MBBS course for the academic year 2012-13 by impression etc. They were also informed about the same matter, two months ago. All of them are of the opinion that the concerned competent authorities could take proper action. They were also informed to get their respective parents by the evening 6 PM 28th November 2012 without fail.

19. Since it was contended before us that the report of the Expert was not made available to the petitioners so as to defend their case, as observed earlier, we offered to all the Advocates appearing for the petitioners to look into the original records, but except Mr. Pradeep Yadav, learned counsel for the petitioner in W.P.No. 51151/2012 none of the other advocates since had not raised any doubt about the report, looked into original documents.

20. At this stage, we would like to make reference to the judgment of the Hon"ble Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, The observations made by the Supreme Court in the said judgment may be relevant which reads thus:

It is well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act.

21. Similarly, the following observations of the Supreme Court in The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, may be useful, which read thus:

The essence of an examination is that the worth of every person is appraised

without any assistance from an outside source. The academic standards require that the authority's appreciation of the problem must be respected. A full-fledged judicial enquiry was not required. It is not necessary to conduct any enquiry in each individual case to satisfy itself who are the candidates that have adopted unfair means when the examination as a whole had to go. It was further held at P.968 E to H that "while we do not wish to whittle down the requirement of natural justice and fair-play in cases where such requirement may be said to arise, we do not want that this Court should be understood as having stated that an enquiry with a right to representation must always precede in every case, however, different. The Universities are responsible for their standard and conduct of the examination. The essence of the examination is that the worth of every person is appraised without any assistance from an outside source. It cannot be held that a detailed quasi-judicial enquiry with right to its alumni to plead and lead evidence etc, is preceded before the result are withheld or examinations cancelled. If there is sufficient material on which it could be demonstrated that the Authority was right in its conclusion that the examination ought to be cancelled then academic standards require that the Authority's appreciation of the problem must be respected.

(emphasis supplied)

21.1 Having considered the observations made by Supreme Court, we do not find any reason to interfere with the order passed by respondents 3 and 4, dismissing the petitioners from the First Year MBBS Course. We record further reasons for reaching such decision.

22. It is well settled that the applicability of principles of natural justice is not a Rule. It depends upon the facts of each case, nature of enquiry and the effect of the order/decision on the right of the person and attendant circumstances.

22.1 It is seen from the record that all the petitioners had voluntarily given their specimen signatures as well as fore-finger prints in the manner it was required for experts examination. They have not disputed the collection of their signatures and fingerprints by the respondents. They have also not disputed the report of the Hand Writing/Finger Print Expert, either in the course of enquiry or before this court. If the facts are not disputed, necessarily the respondents, on consideration of the report and the material on record can draw an inference or pass its order without recording long reasons therefore. The omission to record the detailed reason in the present case is neither illegal nor in violation of principles of natural justice. Similarly the omission to supply a copy of the report, which according to the respondents was shown to the students and their parents, also is neither illegal nor in violation of principles of natural justice, more particularly because no prejudice was either pleaded or demonstrated in the course of hearing of the petitions. We are also satisfied that furnishing of the report would not have made a difference in the result of the case. That apart, according to the respondents, the petitioners and their parents were given personal inspection of the report. In our opinion, in the present case, upon

admitted or indisputable facts only one conclusion was possible, and therefore, even if it is accepted that there was some technical lapse on the part of the respondents, insofar as principles of natural justice is concerned, that by itself would not vitiate the enquiry. There must be some real prejudice to the petitioners. No such prejudice was either pleaded or demonstrated. In any case the petitioners in the facts of the present case, cannot be allowed to invoke the rules of natural justice so as to avoid the consequences.

23. What the writ court under Article 226 of the Constitution need to consider is whether fair opportunity had been given to the petitioners and they had been treated squarely and whether the students had fair dealing with the University. Once the procedural formalities are complied with, in the absence of any allegations of malafide, it must be presumed that the University had acted bonafide and so long as there is evidence justifying the inference arrived at without there being serious procedural irregularity. The writ court is not expected to interfere with the order of educational institution. Therefore, what this court needs to do is to find out whether fair and reasonable opportunity had been given to the students in the given facts and circumstances.

23.1 In the present case, for the reasons recorded in foregoing paragraphs we are satisfied that the students were given full and fair opportunity to meet the allegations at the stage of enquiry and so also by this Court in the course of hearing of writ petitions. Learned counsel for the petitioners could not and did not explain as to why their finger prints and signatures obtained at the time of test did not match with the admitted finger prints and the signatures. The brochure and the notification clearly provide dismissal of the students in case of impersonation and it cannot be stated that the students were not aware about it when they indulged in such malpractice. It is true that the petitioners/students are teenagers, but that by itself, would not be a factor to hold that they were unfairly treated at an enquiry conducted by the College Authorities. We had in the back of one mind, while dealing with the case in hand, that the essence of an examination is that the worth of every person is appraised without any assistance from an outside source. Since there is sufficient material on the basis of which it could be demonstrated that the respondents were right in its decision, it deserves to be affirmed. Merely because a full-fledged enquiry was not conducted, like a judicial or quasi-judicial enquiry, it cannot be held to be illegal when we are satisfied that the allegation of impersonation has been proved against them. It is well settled law that strict rules of evidence Act, and standard of proof envisaged therein do not apply to such proceedings. In the present case the respondents have placed on record all necessary, relevant and acceptable material before us and we are satisfied that their decision is right and deserves no interference. In the circumstances, all the petitions are dismissed.

24. At this stage, learned counsel for the petitioners submitted that when the petitioners were admitted, they paid fees for all five years and the College authorities/University may be directed to refund the same. We are keeping it

open for them to make a representation application to the University/College Authority seeking refund of the fees paid by them and if any such representations are made, we hope and trust that the University/College will consider the same on merits in accordance with law. We observe that the respondents should consider the petitioners' request in the light of the observations made by us regarding the manner in which the admission process was handled by them. Similarly, the petitioners may also apply for return of the original documents submitted by them at the time of admission from the college authorities and if any such request is made, the college authorities are directed to consider and act upon it within a period of two weeks from the date of receipt of such applications. Before we part, we observe that the University Grants Commission should evolve some mechanism to keep close watch on the process of admission conducted by the deemed universities and see that they strictly follow the procedure, in particular, bio-metric verification while admitting the students for a course like MBBS. They should also consider to lay down common procedure, to be followed by the deemed universities while conducting the admission process to such courses. If they find any lapse or infringement on the part of those Universities/their colleges of the rules/regulations/terms and conditions in the Brochures or Notifications they should take appropriate action against them to avoid situations like the one that fell for our consideration in these writ petitions.

The Registrar (Judicial) is directed to forward a copy of this judgment to the University Grants Commission, New Delhi for their information.