

**(1980) 05 PAT CK 0015**

**In the Patna High Court**

**Case No :** Civil Writ Jur. Case No. 1023 of 1980

Rakesh Chandra Sahay Verma and Others

APPELLANT

Vs

The Mithila University and Others

RESPONDENT

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**Date of Decision :** 27-05-1980

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

**Citation :** AIR 1981 Patna 86

**Hon'ble Judges :** Umesh Chandra Sharma, J;S. Sarwar Ali, J

**Bench :** Division Bench

**Advocate :** Prabha Shankar Mishra, Amrendra Sharan and Shravan Kumar, for the Appellant; R.B. Mahto (A.A.G.) and Harendra Pd., for the Respondent

**Final Decision :** Allowed

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## Judgement

Sarwar Ali, J.—The 2nd M.B.B.S. March, 1978 Examination of the Mithila University commenced in July, 1979, 11-7-1979 was the date fixed for the examination of the paper in Preventive & Social Medicines (theory). On account of disturbance in the examination hall the Centre Superintendent cancelled the examination. The petitioners want that the cancelled examination should be re-held. They pray that this Court should direct the respondents to hold the Preventive & Social Medicines (theory) examination of the 2nd M.B.B.S. March, 1978 (Annual) Examination of the petitioners at the earliest.

2. It may be necessary to give the facts in a little more detail. As to what happened on 11-7-1979 can be gathered in this case from the report of the Dr T. N. Jha, Principal and Centre Superintendent, Darbhanga Medical College Centre dated 11-7-1979. Statements made in the petition or in the counter-affidavit cannot be preferred to this report. In the report aforesaid the Centre Superintendent informed the Vice-Chancellor that the examination started peacefully at 10 A.M. After the questions were distributed a few students started shouting in the examination hall. This was followed by a large number of students leaving their seats and protesting against stiffness of the question

paper. This led to a state of confusion. Some of the students tore the question papers and answer books. In the words of the Centre Superintendent "in the melee that prevailed it was difficult to control the situation Even a sizeable number of wilting students were not permitted to sit and appear at the examination." (Underlining is mine).

In this situation the examination had to be cancelled. It was also pointed out in the letter that the conduct of examination in the college campus was not possible. Consequently, it was suggested that the next examination due on 19-7-1979 should be shifted to P. G. Department in the University campus.

3. It appears that a representation was submitted to the Chancellor by the students requesting that the cancelled examination be reheld. The decision of the Chancellor was communicated under Annexure-4 dated 22-9-1979 to the effect that the University should conduct re-examination in Preventive and Social Medicines (theory) of all the examinees of the batch at an early date. This decision was however reversed subsequently (Annexure 5). Finding that the University was not going to hold the re-examination in the cancelled paper in Preventive and Social Medicines (theory) the petitioners moved this Court in C. W. J. C. 3428/1979. While the said writ application was pending the result of the 2nd M.B.B.S. examination March, 1979 was declared and a date was fixed for July, 1978 examination (supplementary). This it is stated in the petition, was also challenged in C.W.J.C. 3428/1979.

4. The aforesaid writ application was taken up for hearing on 29-1-1980 when the writ application was permitted to be withdrawn. A copy of the order of this Court permitting the said withdrawal is Annexure 6. In the order passed by the Court the grievances raised by the petitioners were noticed. The first grievance was that since the result of the examination of the petitioners had not yet been published and the programme of July, 1978 examination had been announced, the petitioners were not in a position to avail of the opportunity to sit at the ensuing (examination) without knowing their result, the second grievance was that so far as the March 1978 examination is concerned although the examination of one paper was cancelled, no fresh examination in that paper had been held. The Court observed that the grievances of the petitioners seemed to be genuine as the learned Advocate General (Shri Radha Raman) appearing on behalf of the University authorities had fairly accepted. The order indicates that the Advocate General assured that the University shall not hold the July, 1978 examination before publication of the result of March, 1973 examination. It was further observed that the Advocate General had given the Court to understand that the second grievance of the petitioners shall be looked into and the needful would be done taking into consideration all the pros and cons of the matter in accordance with law. It was on the basis of these assurances that permission for withdrawal of the writ application was sought by the counsel for the petitioners.

5. It further appears that in pursuance of the assurance given a meeting of the Examination Board was held on 20-3-1980. The Examination Board having

examined the relevant matters formulated its decision which is contained in Annexure 7. The effect of the decision is that the students who would not appear in Preventive & Social Medicines (theory) paper of March, 1978 examination, were permitted to appear in that paper in July, 1978 examination, but the result of the examination in that paper would be published as the result of March, 1978 examination. It was also indicated that the students who passed and secured Honours marks in Preventive and Social Medicines (theory) and other papers will be declared to have passed with Honours in such subjects. Others, who appear in more than one subject and pass, would be declared to have passed 2nd M.B.B.S. July, 1978 examination. The petitioners thereafter moved the Vice-Chancellor for reconsideration of the decision of Examination Board. But the Vice-Chancellor did not reconsider the matter and directed the Principal of Darbhanga, Medical College to act according to the decision of the Examination Board. The University has partially declared the result of March, 1978 examination and has directed the petitioners to appear in the Preventive and Social Medicines (theory) paper. Copies of the notices issued in this behalf are Annexures 9 and 9/1. The petitioners pray for quashing of Annexures 7, 9 and 9/1. The examination being held in July is what is popularly known supplementary examination : ordinarily those appearing the July examination are not declared to have passed with Honours irrespective of marks obtained by them. By treating the appearance of the students in Preventive & Social Medicines paper in July, 1978 examination as that of March, 1978 examination the petitioners, if they fulfil other requirements, can obtain Honours in that and other papers. To that extent the decision is beneficial to them. Had the petitioner been deemed to have failed in Preventive & Social Medicines paper in March, 1978 examination they could not get the benefit of obtaining honours. The grievance of the petitioners, is, therefore, only this that by not holding separate examination of the cancelled paper and treating the July, 1978 examination as that of March, 1978 examination for a limited purpose, the petitioners are being deprived of their chance of appearing at the Supplementary Examination. Learned counsel says that if the examination of the cancelled paper is held prior to the holding of July 1978 examination they would (have) two chances. But now they have only one. If they fail they will lag behind by one year.

6. Indisciplined acts in the examination has been a common phenomenon for sometime past. Recently it has infiltrated into faculties where it was least expected. Medicines and Engineering are faculties where discipline and devotion to studies is not only desirable but imperative. Unfortunately, however, even the students or at least some of them, of such faculties have peculiar notions. They think that if the question papers are stiff they have a right to boycott the examination or to walk out from the examination hall. Such mistaken notions have to be put an end to. The indiscipline in the examination halls has to be firmly dealt with. Observe what has happened even in this case. Some of the students thought that the question papers were not to their liking. They created a confusion. Question papers and answer books were torn. It became impossible

to hold the examination. The Centre Superintendent, consequently, cancelled the examination. In this situation the University was entitled to declare those who were guilty of such indiscipline to have failed at the examination. Not only those, but also all such examinees who willingly or even unwillingly acquiesced in such acts. No one could reasonably object to that. But it sometimes happens that the innocent are made to suffer for the fault of the guilty. That the University should prevent. If students willing to appear at the examination are forcibly prevented from appearing and the University cannot either give them protection or arrange for their appearance at the examination, they should not be made to suffer for the lapse of others. I would, however, caution that what has been stated is not exhaustive. A variety of situation may actually emerge. Each situation will have to be dealt with as it arises. No one can claim to have hind sight to envisage all possible situations and to lay down principles governing them all.

7. Coming to the facts of the instant case, it is clear from Annexure 1 that a sizeable number of students were willing to appear at the examination. Not only that they were not permitted to sit and appear at the examination. The said Annexure does not indicate that the authorities were prepared to make arrangement for the willing students to appear and they did not co-operate. In the circumstances, it is clear that a "sizeable number of students were victim of circumstances. They themselves were not at fault. They cannot be made to suffer for the delinquency of others. Had there been material to come to the conclusion that, however, unwillingly this sizeable number also acquiesced in the action of the indisciplined students neither law nor equity would have been in their favour. But such is not the situation here. The assumption made that all the students were willing party to the boycott of the examination is not borne out by the records of the case and the materials available. I am, therefore, of the view that the innocent cannot be made to suffer.

8. It cannot be disputed that the students who appear in July, 1978 examination, on the basis of arrangement envisaged under Annexure 7 shall have only one chance to appear in Preventive and Social Medicines (theory) paper. If they fail they fail. They lose one year. Not so with those students who fail in other subjects. They get two chances to clear off the examination. There must be some rational basis for this distinction. The equality clause of the constitution operates even in respect of or privileges conferred (see *The State of West Bengal Vs. Anwar Ali Sarkar*, ). I do not find any rational basis for distinguishing students failing in Preventive & Social Medicines and those failing in other subjects. If the latter get two chances, so must the former. Of course, this applies only to innocent students in the sense I have used the expression in this judgment.

9. Now the only question is what order should be passed in the circumstances of the present case. In view of the fact that there are always administrative difficulties and constraints, in my view, the University should be given two alternatives. The first is that the University may hold a separate examination of the cancelled paper in Preventive & Social Medicines (theory) of only such

students who were willing to appear at the examination and were prevented to sit in the examination on 11-7-1979. If that be the decision of the University then the examination will have to be so arranged that it is held and results published in advance to enable the students, who may fail, to appear at the July, 1978 examination. In that case they would be treated for the purpose of July 1978 examination in the same way as the other students who had failed in other subjects. There will be no question of their getting Honours at the July, 1978 examination.

10. The second alternative is that the examination may be held according to the scheme as envisaged in Annexure 7. But after the results are published those who fail, and would be eligible to appear at the supplementary examination, should be permitted to appear at a special examination, which would be the supplementary examination for them, before the 3rd M.B.B.S. examination is held, which we are told, is likely to be held in December, 1980. Such examination would not be a third examination, but the 2nd or supplementary examination for the students failing in Preventive and Social Medicines. I may clarify here that I am not expressing any opinion as to whether the petitioners are or are not such students who (sic) I have used this expression in this judgment. That may have to be determined by the University, if necessary.

11. I would, accordingly, allow this writ application and direct the respondents to proceed in the manner as indicated above. In the circumstances there will be no order as to costs.

U.C. Sharma, J.

12. I agree.

Petition allowed.