

(1996) 04 MAD CK 0038

In the Madras High Court

Case No : Writ Petns. No's. 11133 and 11134 of 1995

Ravi Bhatt and another

APPELLANT

Vs

The Director General, Armed Forces Medical Services and
others

RESPONDENT

Date of Decision : 09-04-1996

Acts Referred:

Army Act, 1950 — Section 2
Constitution of India, 1950 — Article 14, 21, 226

Citation : AIR 1997 Mad 78 : (1996) 2 MLJ 220

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Advocate : T.S. Sivagnanam, for the Appellant; T. Srinivasamoorthy, A.C.G.S.C.,
for the Respondent

Judgement

1. By an order dated 22-11-1995, in W.M.P. Nos. 25014 and 25015 of 1995, the petitioner was permitted to amend the prayer in the respective

writ petitions, which runs thus:

Heard Mr. T. S. Sivagnanam, for the petitioners and Mr. T. Srinivasamoorthy, for the respondents. I have gone through the affidavit filed in

support of the above petitions for amendment. I am satisfied that in the interest of justice, the amendment as prayed for should be ordered. Hence,

both these petitions are ordered.

2. The amended prayer in W. P. No, 11133 of 1995 reads as follows:

To issue a Writ of Certiorarified Mandamus or any other appropriate Writ, Order or Direction in the nature of a Writ, calling for the records

relating to the telegram of the first respondent bearing No. 87 and quash the same and direct the respondents 1 and 2 to adroit the Petitioner (Roll

No. 23818) to the M.B.B.S. Course in the Armed Forces Medical College, Pune-411 040, for the 1995 Session.

3. The amended prayer in W. P. No. 11134 of 1995 reads as follows:

To issue a Writ of Certiorarified Mandamus, or any other appropriate Writ, Order or Direction in the nature of a Writ, calling for the records

relating to the order of the first respondent in No. 33073/93/C/DGAFMS/ DG-1D 2-11-1995 received on 13-11-1995 and quash the same and

direct the respondents 1 and 2 to admit the petitioner (Roll No. 23817) to the M.B.B.S. Course at Armed Forces Medical College, Pune-411

040 for the 1995 Session.

4. The impugned order in both the writ petitions reads thus:

1. Based on the Court of Inquiry ordered to enquire into the alleged irregularities in the conduct of AFMC Pune, 1995 Session, the Govt. of

India, Min. of Defence have decided to disqualify You for admission to the above course.

2. This is for your information.

4A. Notice of motion was ordered by Hon''ble Mr. Justice Shivaraj Patil, on 18-8-1995. On 5-9-1995 the same learned Judge, passed in order

in W.M.P. Nos. 17671 and 17672 of 1995, which reads thus:

Post after two weeks at the request of learned counsel for the respondents. In the meanwhile in case the petitioners are selected, their seats shall

not be filled up until further orders.

5. The second respondent College is affiliated to the University of Pune and is under the direct and sole control of the first respondent. Clause 16A

of the Regulations for the Medical Services of the Armed Forces, 1983 reads as follows: --

16A, The DG AMES, as head of the Armed Forces Medical Service will be responsible to the Government for the overall medical policy, while

the Directors of Medical Services will be the Medical Advisers to their respective Chief of Staff and will be responsible for the day to-day

administration and proper functioning of the medical services of the Army, Navy and Air Force. The DG AFMS will function directly under the

Ministry of Defence

6. Regulation 45 of the Defence Services Regulations -- Regulations for the Army

Volume-1, Revised Edition 1987, reads thus:

45. Training Centres Establishments and Schools of Instruction -- Chain of Responsibility-- (a) All Schools, training formations, training units and

training establishments are under the command of General Officer Commanding in Chief of Commands for discipline and local administration

purposes, except where specific orders to the contrary have been issued.

(b) All schools and training establishments listed in Appendix "A" to these regulations and commonly referred to as category "A" Establishments

will be under General Officer Commanding in Chief of Commands for discipline and local administration, but for all other purposes including

operations, they will be directly under and controlled by Army Headquarters, excepting Armed Forces Medical College which will be directly

under the control of DG AFMS.

7. According to the petitioner-Ravi Bhatt, who has completed his Plus two course during 1994 under the Central Board of Secondary Education,

and has secured excellent marks in all subjects and in Physics he secured 79 out of 100, Chemistry 87 out of 100 and in Biology 84 out of 100.

As per the Central Board of Secondary Education, positional grade is allotted to all candidates and the petitioner has secured A1 and A2 grades in

all subjects, including English, Hindi, General Studies, Work experience and Physical and Health education.

8. According to the petitioner -- Arun Lakshmanan, he has completed his Plus Two course during 1994 under the Central Board of Secondary

Education, and had secured good marks in all subjects. As per the Central Board of Secondary Education, positional grade is allotted to all

candidates and the petitioner has secured good grades in all subjects.

9. The second respondent College is affiliated to the University of Pune and is recognised by the Medical Council of India. The selection to the

second respondent College is based upon a written test followed by an oral interview for such of those candidates who have been assessed

suitable to appear for the interview. The College is under the over-all control of the first respondent, namely, the Director General, Armed Forces

Medical Services, Ministry of Defence, New Delhi. The minimum eligibility for the candidates is that they should have secured 60% aggregate

marks in three science subjects, namely, Physics, Chemistry and Biology and not

less than 45% marks in English and 50% marks in each of the science subjects, the candidate should have passed an examination in mathematics of the matriculate standard. The petitioners applied to the second respondent, namely, Office Incharge, Admission, Armed Forces Medical College, Pune, in the prescribed form, enclosing all requisite details as mentioned in the application. The petitioners were assigned Roll No. 23818 and 23817 respectively and an admit card was issued to them separately to sit for the entrance examination for admission to the M.B.B.S. course -- Session 1995, held on 30-4-1995. The examination centre was St. Dominic's Anglo Indian Higher Secondary School, St. Thomas Mount, Madras-600 016. According to the petitioners, they performed excellently well in the entrance examination and consequently by the proceedings of the first respondent in No. 33073/95/DGAFMS /DG ID, dated 16-5-1995 and 20-5-1995 respectively, the petitioners were assessed suitable to appear for interview for admission to MBBS course at AFMC Pune 1995. Session. The interview centre was at Pune and the petitioners interview serial Number was 24 and 18 respectively. The petitioners appeared for interview on 4-7-1995 and 13-7-1995 and performed well. The original certificates of the petitioners were verified and found to be in order. The petitioners were fully confident of being selected. While that being so, the petitioners came to know through their parents, who are in the defence service, that a Court of inquiry will be held on 10-7-1995 to go into certain alleged irregularities in conducting the entrance examination. The petitioners along with their parents and all other candidates, who were selected and who had sat for the entrance examination at Madras were present. The petitioners learnt that a Commission of enquiry was constituted based upon a pseudonymous complaint. It is note worthy to mention at this juncture, as per the Army Order 69 73. it has been decided by (he Government that with immediate effect no action is to be taken on anonymous and pseudonymous complaints. Thus in view of the said order, the commission of enquiry constituted is patently without any jurisdiction.

10. It is submitted that they were not afforded with any charge memo or even a show cause notice as to the nature of allegation or complaint. The commission of enquiry was completed on 19-7-1995. As per the schedule of

important dates as published by the second respondent, the expected date of the final result was 3rd week of July, 1995 and expected date of admission to the college was 1st week of August, 1995. It is submitted that 2000 candidates sat for the written test at Madras and 700 candidates through out India were called for interview and out of 700 candidates 130 were selected. The petitioners state that the list of selected candidates was displayed in the notice board of the second respondent college. The list was not published in any Newspaper. On verification, the petitioners Roll Numbers 23818 and 23817 find place in the list of selected candidates. However, the petitioners had not been issued the admission card. On enquiry, the petitioners were orally informed that admission card would be issued on completion of the commission's enquiry. However, the commission of enquiry was over as early as 19-7-1995 and the petitioners had not been issued the admission letter.

11. It is contended that the petitioners were not put on notice about the nature of allegation and the purpose for which the commission of enquiry was constituted and the nature of complaint received. The respondents failed to follow the minimum requirement of the principles of natural justice by putting the petitioners on notice, before calling upon them to answer an unknown charge. The respondents 1 and 2 have discriminated the selected candidates from the Madras Region. The petitioners further submitted that the failure to admit the petitioners to the course, inspite of having been selected, is violative of Article 21 of the Constitution of India. The petitioners also learnt that the Chief Invigilator and other officers under whose supervision the entrance examination was conducted, who also appeared before the commission of enquiry also stated that no untoward incident or any malpractice was committed during the entrance examination, while, that being so, the respondents 1 and 2 would be unjustified in not admitting the petitioners. It is further submitted that the petitioners and other selected candidates had given in writing before the commission of enquiry that no mal-practice had occurred during the entrance test. The petitioners also learnt that the pseudonymous complaint is said to have been sent in the name of one Arul Murugan from Salem, and the said complaint had been written in Hindi language. The said Arul Murugan also appeared before the commission of enquiry along with the

petitioners. It is reliably learnt that the said Arul Maurugan appeared before the commission of enquiry and stated that he does not know Hindi and he has not written the said letter. Thus viewed from all angles, the commission of enquiry has not established anything incriminating as regards the entrance examination and denial of admission to the petitioners is unsustainable in the eye of law. The respondents 1 and 2 are estopped from denying admission to the petitioners. The petitioners have scored excellent marks and have to be admitted based upon the selection already made. Therefore, the petitioners have originally filed the writ petitions for a writ of Mandamus directing the respondents to admit the petitioners to the MBBS Course at -Armed Forces Medical College, Pune-411 040, for the 1995 session. upon the selection already made.

12. During the pendency of the above writ petitions, the petitioners filed WMP Nos. 25014 and 25015 of 1995 to amend the prayer. The petitioners filed the above Writ Miscellaneous Petitions stating that they have not been served with the letter of telegram from the first respondent cancelling the admission to the first year MBBS course 1995, however they are constrained to seek for quashing of the telegram issued by the first respondent, a copy of which has been appended to the rejoinder affidavit filed by the respondents. These two petitions were ordered.

13. Two separate counter-affidavits were filed on 22-9-1995. The constitution of the Court of Inquiry on the directions of the Chief of Army Staff to enquire into the alleged irregularities in the conduct of written entrance examination for MBBS course of Armed Forces Medical College, Pune, based on a complaint received from Arul Murugan, was admitted in the counter. The Court of inquiry is pending and the final report is awaited and therefore pending finalisation of Court of inquiry the admission results have not been published in the Newspapers. It is stated that the father of the petitioner -- Ravi Bhatt was serving as an officer in the Military Hospital where the examinations were conducted and the Officer-in-charge of the examination and the invigilator were his colleague officers serving in the same hospital where the father of the petitioner was posted. In fact the inquiry investigation in suspected irregularities in a total of 26 candidates and held at three different places, namely, Agra, Secunderabad and Madras.

14. Likewise, the father of the petitioner --- Arun Lakshmanan is a high ranking Officer (a Service Brigadier) in Army Medical Corps and employed as Deputy Director Medical Services in the Area Head-quarters, Madras and controls the Military Hospital Madras also, where the said examination was conducted. The Officers of the Military Hospital and the invigilator of the said room, where the petitioner-son was to sit, are subordinate to the father of the petitioner and that the enquiry was initiated against 26 candidates in the matter of suspected irregularities in the examination held at Madras, Secunderabad and Agra. In view of the Court of inquiry, proceedings has not been finalised and the disputed seats have been kept vacant till finalisation of Court of inquiry. The writ petitions are therefore pre-mature and as such liable to be dismissed by this Court.

15. Along with the counter-affidavits dated 22-9-1995, an English translation of the complaint (Annexure-I) was also enclosed. The complaint was originally sent in Hindi and a translated version was filed in this Court, which reads thus:

To

The Chief of the Army Staff,

Army HQ,

New Delhi-110 001.

Respected Sir,

In Madras, the AFMC entrance exams, were conducted on 30th April, 1995. The Code No. was 22. In the exams, in room No. 5 candidates

with entrance Code Nos. 21625 to 23950 were sitting but nobody from Code Nos. 23814 to 23818 appeared in the exam, from the said room.

1. 23814 -- Miss. S. Goswami D/ o. Mrs. A, Goswami (Ltd. Col)

2. 23815 -- Miss B. Goswami D/o. -do-

3. 23816 -- Miss. A. Shankaran D/o. Sub (JQM) Shankaran.

4. 23817 -- Mr. L. Arun S/o. Laxman (Brig).

5. 23818 -- Mr. R. Bhatt S/o. TD Bhat (Capt.) (QM)

All from Military Hospital staff (St. Thomas Mount), Madras-16.

2. The exams. of the above candidates were conducted in the house of Capt. TD

Bhat. The question papers were brought by Lt. Col. Sharma in the house of TD Bhat and made to solve/answered by one professor. The Professor was paid Rs. 10,000/- (Rs. Ten thousand) by TD Bhat. Lt.

Co. Sharma had delivered the question papers in the house of TD Bhat by Secret means. Lt. Col. Azam had delivered answer sheets to Capt.

Bhat through Lt. Col. Sharma and later on mixed these answer sheets with other deposited answer sheets.

Lt. Col. Azam OIC Examination,

Lt. Col. Sharma -- Invigilator of Room No.5.

3. If the answer sheets of the above candidates is inspected, it will be revealed that all the questions in respect of each candidate would be similar

as same as they have been attempted/solved by one professor only. What a better proof is required? All these informations have been given by my

father who has seen everything with his own eyes. When my father asked Lt. Col. Sharma as to where was he taking the question papers from the

examination site, he was rebuked and threatened that I would be failed and because of this reason, and have been failed. Lt. Col. Sharma told a lie

that there was a call duty and went to the house of TD Bhat and brought the answer sheets. When my father followed him and was seen doing so

by TD Bhat, he was threatened and made to run. My father had gone to some distance and these 5 candidates came out. What a bigger proof do

you want ? If the defendants of the country start doing such illegal acts where will we go ? If you did not take any action in this regard, being a

fellow citizen of India. I will approach the Honorable Prime Minister and expose these traitors before the society. You are therefore requested to

conduct a secret enquiry of these traitors.

Yours sincerely,

Sd. Arul Murugan,

S/o. Retd. Hony Capt. Murugan.

Copy to:

1. DG AFMS.

2. DGMS(Army).

3. DGMS(Navy).

4. DGMS (Air Force).
5. Comdl. AFMC.
6. Office of the (DG-IB).
7. Jt. D/R. AFMC(TR).
8. GOC IC ATNKK & G. Area.
9. DDMS Southern Command.
10. DDMS ATKN & G Area.
11. Commandant of Military Hospital, Madras.

A letter dated 19-6-1995 from Maj. Gen. S. Biswas, SM, Dean & Deputy Commandant, Armed Forces Medical College. Pune-411040,

addressed to Surg Vice Admiral Indrajit Singh, PHS, DGAFMS, Ministry of Defence, "H" Block, New Delhi-110 001, was also enclosed as

Annexure-II to the said counter-affidavit. The said letter reads as follows:-

Dear Admiral,

1. As Chairman of MBBS Entrance Exam. and Interview Committee, I perused the roll numbers of successful candidates of the written

examination, along with my staff. I came across certain figures which struck me as unusual. It was noticed that there were a number of clusters of

sequential roll numbers in the select list (attached as appx.) On further analysis it was revealed that the number and size of clusters were particularly

large from three centres viz. Secunderabad, Agra and Madras. On checking the roll numbers against the particulars held in the admission cell, it

was found that the five roll numbers of Madras Centre which appeared in sequential order, pertained to the children of the staff of the centre which

conducted the exam.

2. These facts prompted me to write this letter to apprise you of this unusual pattern, lest objections/queries are raised at a later date hinting at

unfair conduct of examination.

16. The petitioners have filed separate reply affidavits dated 25-9-1995 stating that the first respondent is the sole authority under whose control

the Examinations were conducted and the second respondent is also under the control of the first respondent and therefore the Chief of Army

Staff/Naval/ Staff, Air Staff or their subordinate officers like Adjutant General,

Directorate of Vigilance (AGDV) have no control or jurisdiction over the conducting of the Entrance Examination or the selection process to the Armed Forces Medical College the second respondent. The first respondent is the sole authority constituted in the Ministry of Defence. The Chief of Army Staff or any other Officer have no jurisdiction to conduct a Court of Inquiry into the matter concerning the selection to the second respondent College. The petitioners are civilians and therefore the provisions of the Army Act or any other enactment would not be applicable to them and if at all they have to be summoned in a Court of Inquiry, procedure contemplated under the Criminal Procedure Code has to be followed with orders from the Magistrate. Thus, the entire proceedings is illegal, without jurisdiction, bad in law and violative of the principles of natural justice. The petitioners were not aware as to who and how the Court of Inquiry was constituted. The petitioners were not given any copy of the complaint or statement, which are produced before this Court for the first time. The petitioners were not afforded the right of cross-examination of Arul Murugan or any other Officer, which had denied the petitioners of their reasonable opportunity to defend themselves. The contention as regards the Army Order 69/73, which has been raised by the petitioners has not been denied by the respondents. The entire enquiry is solely based on suspicion as seen from the counter-affidavit.

17. W.M.P. Nos. 21428 and 21429 of 1995 were filed to implead the proposed respondents 3 to 5 as respondents 3 to 5 in the respective main writ petitions. Both the petitions were allowed by Hon'ble Mr. Justice Shivaraj Patil, on 13-10-1995. The impleaded respondents 3 to 5 have filed separate counter-affidavit in both the writ petitions, on 13-10-1995. It is stated that the Court of Inquiry was ordered on receiving a complaint in the name of one Murugan, who was a candidate in the same examination and later followed by a written communication received from Maj. Gen, S. Biswas; Dean and Deputy Commandant & Chairman of conduct of entrance AFMC examination and interview of the college, who was directly concerned and had access to all sheets of the candidates. It was on his observation and analysis of the unusual pattern of answering in the answer sheets, communicated in his D.O. letter, (which has been extracted above) dated 19-6-1995 it was considered necessary to find out the truth by

way of constituting a Court of Inquiry composed of Senior Army Officers from different places and not at all connected with this subject and was

accordingly constituted as per law. The petitioner's contention that A.O. 69/73 debars investigation on anonymous complaint is misleading and

irrelevant and the subject matter of allegation was of verifiable nature especially in circumstances when a Senior Army Officer i.e., Maj. Gen. S.

Biswas. Dean, Deputy Command & Chairman of conduct of entrance examination and interview had on available material analysed and opined the

possibility of the use of unfair means during the conduct of the said examination. It is further contended that AFMC is affiliated to University of

Pune but since it is managed by Armed Forces and responsibility of conduct of examinations having been assigned to Army, the Chief of Army

Staff, being head of the organisation is empowered to order a Court of Inquiry, which is a fact finding body. Therefore, it is denied in the counter-

affidavit that the Court of Inquiry lacked jurisdiction or legal sanctity.

18. The Court of Inquiry constituted by Army authorities is defined by Army Rule 177, which reads thus:

Court of Inquiry : (1) A Court of inquiry is an assembly of officers or of officers and junior commissioned officers or warrant officers or non-

commissioned officers directed to collect evidence, and, if so required, to report with regard to any matter which may be referred to them.

(2) The Court may consist of any number of officers of any rank, or of one or more officers together with one or more junior commissioned

officers or warrant officers or non-commissioned officers. The members of Court may belong to any branch or department of the service

according to the nature of the investigation.

3, A Court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps.

Therefore, it is contended that a Court of Inquiry has a statutory sanction in Army Rules and is a fact finding body only. The proceedings of the

Court of Inquiry after investigation are deliberated upon by various authorities to decide whether the investigation establishes the veracity of

allegation and to decide upon the merits of the case. Therefore, at the stage of Court of Inquiry, no Charge memo or a show cause notice as to the

nature of allegation is required to be given to any of the witnesses. The Court of

inquiry is constituted to bring out the factual details of the case and is limited to the collection of evidence and thereafter submitting their recommendations on the basis of findings. Therefore, framing the charge memo or issue of notice being an act subsequent to its functions arc out of its purview. It is also submitted that the examinations were conducted under the supervision of Army Officers at various centres. Therefore, one of the essential facts under investigation was the culpability, if any, of the invigilating staff. The Chief of Army Staff has carried out a thorough investigation by examination of 37 witnesses from Madras centre alone, besides examining all the relevant documents, including answer sheets. The Court of Inquiry has clearly established and confirmed the fact of use of unfair means in respect of the petitioners amongst others. The findings of the Court of Inquiry have been critically examined at the level of Chief of Army Staff and the same has been submitted to the Central Government for finalisation with regard to admission. It is also brought to the notice of the Court that action against the defaulters belonging to Army have already been directed and is being processed. The petitioners' contention that they are civilians and therefore they are not subject to the Army Act does not mean that they cannot be called as witnesses in a Court of Inquiry where serious allegations of using unfair means in relation to seats of Armed Forces Medical College have been revealed during analysis of the, answer sheets. The Court of Inquiry conducted under the Army Rule is empowered to call civil witnesses and accordingly the petitioners were called, who deposed before the Court of Inquiry and during the course of investigations the culpability of certain invigilators had been established and also the fact that total 9 candidates from Madras Centre have been found to have used unfair means by the Court of Inquiry on the basis of cogent and reliable evidence.

19. The petitioners filed a common reply affidavit dt. 26-10-1995, signed by Mary Lakshmanan. It is stated in the reply that neither in the prospectus nor in the instruction to candidates there is any mention that the Chief of Army Staff or Chief of Naval Staff or Chief of Air Staff have any jurisdiction over the conduct of the examination or to the selection to the second respondent College. Therefore, any Inquiry constituted or initiated by them is patently without jurisdiction. The petitioners have reiterated

the contention that the Court of Inquiry was without jurisdiction.

Merely because the Court of Inquiry was only a fact finding body, it does not mean that provisions of natural justice can be given a go by. The

Court of Inquiry is without jurisdiction and constituted, based on a pseudonymous complaint. The said pseudonymous complainant disassociated

himself from the Court of inquiry has been admitted by the respondents in their counter-affidavit. The petitioners have not been furnished with the

copy of the finding of the Court of Inquiry. The Court of Inquiry has no jurisdiction to re-evaluate or re-examine the answer sheets, as the rules of

selection does not permit any such revaluation. The Central Government cannot take a decision based on a report by a body which does not have

jurisdiction to investigate the matter. The petitioner in W.P. No. 11134 of 1995 is a minor and the respondents under the pretext of calling the

petitioners as witnesses, recorded statements and they are sought to be penalised with materials which were never furnished to them. The first and

foremost requirement would be that the petitioners should be put on notice as to the specific charge or allegation which is to be answered by them.

On the absence of such specific allegation any further proceedings initiated would be void in the eye of law being vague. The Court of Inquiry said

to have been made nearly two months after the examinations were conducted and that too after the results were declared. The said Major General

Bishwas did not appear before the Court of Inquiry nor had given any statement duly cross-examined.

20. A common rejoinder affidavit was filed by the respondents to the common reply affidavit filed by the petitioner, dated 26-1-1995, reiterating

the contentions raised earlier. Along with this common rejoinder affidavit, a xerox copy of the telegram, the order impugned in these writ petitions,

was enclosed.

21. A common additional rejoinder was filed by the respondent on 20-11-1995. It is stated in this common additional rejoinder that the conduct of

AFMC examination is a military duty.

22. A common additional affidavit was filed on behalf of the respondents 3 to 5, dated 17-11-1995. It is stated in the counter-affidavit filed by the

proposed respondents 3 to 5 that some errors were inadvertently crept in and therefore the same is brought to the notice of the Coun. The

following is the substituted paragraph for Page 2, para 5, line 5 to last line on the same page and continuing up to line 8 on page 3 of the counter-

affidavit filed on behalf of the proposed respondents 3 to 5 dated 13-10-1995:

The constitution of Court of Inquiry is admitted. The same was ordered on receiving a complaint in the name of one Mr. Arul Murugan, who as

per our records was a candidate for the same examinations and later followed by written communication received from Maj. Gen. S. Biswas, Dean

and Deputy Commandant and Chairman of conduct of AFMC entrance examination and interview who had access to the results. It is submitted

that it was on his observation and analysis of the unusual pattern of the results as communicated vide his D.O. Letter (attached as Annexure-II to

counter-affidavit filed earlier) that it was considered necessary to find out the truth by way of constituting a Court of Inquiry composed of Senior

Army Officers from different places and not at all connected with this subject and was accordingly constituted as per law.

23. I have heard the arguments of Mr. T. S. Sivagnanam, learned counsel for the petitioners and Mr. T. Srinivasamoorthi, Addl. Central Govt.

Standing Counsel, for the respondents. The entire records were made available to the Court including the records of the Court of Inquiry. Learned

counsel for the petitioner was also permitted to peruse the same in the office of the counsel for the respondents. I had been taken through the entire

pleadings, which are voluminous in nature, and also of the entire Court of Inquiry records.

24. Mr. T. S. Sivagnanam, learned counsel for the petitioners, made the following submissions.

(a) No action can be taken by the respondents on the anonymous and pseudonymous complaints.

(b) The selection procedure is governed by the prospectus and the instructions to candidates, as published by respondents 1 and 2, and they are the only rules of selection.

(c) Under the prospectus, which is the rule of selection, the Local Officer in charge is the final authority as regards the written entrance

examination. Respondents 1 and 2 are the authorities who are wholly responsible for the entire selection process and the Chief of Army/Navy/Air

have no jurisdiction or control over respondents 1 and 2. The 1st respondent is

not a subordinate of the 3rd respondent.

(d) No complaint or report had ever been received from any person during the conduct of the examination on the day of examination or even after

that day by the Local Officer in charge as regards the alleged malpractice.

(e) Maj. Gen. Biswas was the Chief of the Interview Committee and he had ample opportunity to assess the merits of the petitioners, and in fact,

the petitioners had done extremely well in the interview and were selected, which had been admitted by the respondents in the counter-affidavit.

(f) The letter written by Maj. Gen. Biswas is only based on clusters, which is not an unusual phenomena.

(g) Court of Inquiry is vitiated not only because of want of jurisdiction but also on account of the failure to follow the minimum principles of natural

justice, in that, the petitioners were not given any notice of hearing before the Court of Inquiry but were only telephonically informed. The

petitioners, said to have been called as witnesses before the Court of Inquiry, are being penalised based on the findings, when the petitioners were

not put on notice as to the nature of allegation or complaint which they are called upon to answer especially when their right of admission to

Medical College is affected.

(h) The alleged complaint written by Arul Murugan and the letter written by Maj. Gen. Biswas had not been furnished to the petitioners. The

alleged complainant Arul Murugan turned hostile and disassociated himself from the alleged complaint. Therefore, the whole basis itself goes. He

never appeared for the examination and had no locus standi. The claim of the complainant that he could not get admission is false and the complaint

is frivolous and false.

(i) No opportunity to cross-examine the said Arul Murugan was given, though the English version of the complaint was furnished to the petitioners"

counsel at the time of argument.

(j) The Court of Inquiry has re-evaluated the answer sheets, which is without jurisdiction. The prospectus does not permit re-evaluation.

(k) The Court of Inquiry has recommended two candidates for selection, which is without jurisdiction and which would give rise to a presumption

that the examination was properly conducted in so far as those two candidates are concerned under the same Invigilator and Chief Invigilator,

under the same circumstances.

25. Mr. T. Srinivasamoorthi, learned Addl. Central Govt, Standing Counsel, in his reply submitted that the petitioners and their parents, who are

senior officers in the Military Hospital/ Military Headquarters, ATNGK Area, had voluntarily partaken in the Court of Inquiry and had given

evidence. Ample opportunity was provided to the petitioners' counsel for inspection of the report of the Court of Inquiry constituted by the Army

Chief of Staff under Army Regulation 177, and also the findings of the Court of Inquiry. The Court of Inquiry had been constituted by the Army

Chief to go into the allegations relating to the irregularities committed in the conduct of AFMC Entrance Examination held on 30-4-1995 at

Madras as alleged by Arul Murugan, through a complaint addressed to the Chief of Army Staff.

26. According to Mr. T. Srinivasamoorthi, it is evident from the facts that the petitioners have not come to Court with clean hands. In the

prospectus and the application form annexed thereto, it is clearly mentioned that ""any violation of instructions and adoption of unfair means shall

render a candidate liable for cancellation and his or her script liable for forfeiture"". According to him, the entire facts will establish that the

petitioners and three others associated with them, had planned the whole affair in great detail right from the time the application form was

purchased by sending Junior Commission Officer, who was deputed by Mrs. Goswami, the Registrar of the Military Hospital at Madras, to

procure five applications in sequential order. The object with which this method was adopted is not far to seek. Consequent to the sequential order

of the application forms, the seating arrangement of the five candidates would be one behind the other or in close proximity of each other to

facilitate the adoption of unfair means in the AFMC Entrance Examination.

27. Mr. T. Srinivasamoorthi invited my attention to some of the findings of the Court of Inquiry. It is seen from the proceedings of the Court of

Inquiry that the Junior Invigilator was purposely called away soon after the commencement of examination. The Senior Invigilator Mr. Lt. Col. K.

Sharma, who was required to be present along with others for handing over the answer sheets in the control room, was absent when his turn came

to hand over the test material from Room No. 5. Thus, for 1 1/2 hours or

thereabout, the Senior Invigilator Lt. Col. K. Sharma was missing with the answer sheets from the control room. Thus, it is contended by the learned counsel for the respondents, that the complaint given by Arul Murugan was substantially borne out. Inasmuch as the allegation of Arul Murugan though pseudonymous, has been proved to be substantially correct, the same cannot be rejected. The Defence Ministry was justified in following the Instructions given in the Circular, Instructions issued by the Army Headquarters.

28. That apart, according to Mr. T. Sri-nivasamoorthy, the letter of the Senior Army Officer Maj. Gen. S. Biswas, Dean, Deputy Commandant for the conduct of examination and interview, had, on the basis of the available material, analysed and opined the possibility of the use of unfair means during the conduct of the examination. The Court of Inquiry is only a fact finding body constituted by the Army Chief to go into the irregularities in the conduct of the AFMC examination and the involvement of Senior Army Officers connected therewith. According to the learned Counsel for the respondents, unfair means appears to have been adopted after the examination was over. It is stated that as per the prospectus, there is a service liability in paragraph 4 where it is provided that all the students attending the AFMC are compulsorily liable to serve as Permanent Commissioned Officers in the Armed Forces and in paragraph 10 of the prospectus it has been provided that the Government will provide many concessions to all medical students such as free ration, free accommodation, a subsidy of Rs. 8,000/- per student for purchase of books and equipments, uniform allowance, washing allowance, etc.

29. Mr. T. Srinivasamoorthy would submit that the Defence Ministry is spending about Rs. 3 1/2 lakhs on each candidate who is selected for the course, needless to say that the selected candidate must be of unimpeachable character and befitting the post which he would be occupying in the Army in due course. It is submitted that the conduct of the petitioners left much to be desired and the Defence Ministry disqualifying as the final authority for admission, was entitled to disqualify the candidates through DGAfms as the Armed Forces Medical Services is a Defence Institution. My attention was also drawn to Para 20 of the prospectus wherein it has been stated that on successful completion of the M.B. B.S.

Course from AFMC, the medical students will be joining Armed Forces Medical Services as Commissioned Officers in one of three services viz.,

Army, Navy and Air Force.

30. According to the learned counsel for the respondents, AFMC, Pune, is under the control of Ministry of Defence and as such, the said Ministry

has control over the admission and is entitled to disqualify candidates adopting unfair means. In this case, the Court of Inquiry had examined 37

witnesses including the candidates and the parents of the petitioners herein and others. Some of the witnesses have been cross-examined wherever

necessary and the Ministry of Defence has the power to disqualify any candidate as per the rules. The learned counsel contended that the original

answer sheets were shown to the witnesses and examined during the Court of Inquiry and the fact of use of unfair means by the candidates has

been clearly established"by the Court of Inquiry.

31. Winding up his arguments, the learned counsel for the respondents submitted the following points:

(a) The Court of Inquiry was convened under Army Regulation 177 to find out the factual aspects of verifiable nature on the instructions of the

Army Staff Chief.

(b) The candidates were examined as witnesses and not as accused and therefore, no charge memo or notice is required to be given to the

petitioners.

(c) The complaint received by the Chief of Army Staff was ink signed in the name of one Arul Murugan, who. as per the records, was a candidate

in AFMC Examination from Madras Centre.

(d) Not only the complaint of Arul Murugan but also the DGAFMS had received a D.O. letter written by Maj. Gtn. S/B. Biswas, who was Dean

and Deputy Commandant of AFMC and Chairman of M.B. B.S. Entrance Examination and Interview Committee. In the opinion of an

experienced and senior officer like Maj. Gen. S. Biswas. it was very uncommon and unusual that such a large size of cluster of candidates qualified

in written examination. The matter looked serious when all these candidates were found to be the wards of officers, staff posted at MH, Madras

which was the responsible unit for conduct of examination.

(e) Unfair means appears to have been used after the examination was over. The officer-in-charge of the examination himself has been found to be

blameworthy and action is being initiated against him.

(f) The invigilating staff during the AFMC examination were very much on military duty.

(g) Mr. T. Srinivasamoorthi pointed out the discrepancies in the answer sheets, which, according to him, establish the mal-practice.

(h) The order passed by the Defence Ministry disqualifying the petitioners is neither a judicial nor a quasi-judicial order. Hence, the writ petitions

are misconceived. The writ petitions are neither maintainable in law nor on facts and have to be dismissed in limine.

32. I have given my anxious consideration to the facts and circumstances of the case and also on the legal issue. I am unable to subscribe to the

views expressed by the learned counsel for the respondents in disqualifying the selection of the petitioners to the M.B. B.S. course. This Court and

the Hon'ble Supreme Court have consistently held that the object of Article 14 of the Constitution of India is wider and is to ensure fairness and

equality of treatment. If the action of the respondents is arbitrary, there must be a denial of equality and Article 14 of the Constitution strikes at

arbitrariness of State action in any form. Admittedly, there have been 69 clusters in the results announced by the 1st respondent. While so, the

Court of Inquiry has been initiated only in three centres, which is discriminatory and there has been no explanation in the counter-affidavits as to

why no action was taken in respect of other clusters, which is unreasonable, and a discriminatory and therefore. Article 14 of the Constitution

would apply. The Supreme Court in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, has held that non-arbitrariness is an

ingredient of Article 14 of the Constitution and natural justice is also a requirement of Article 14, for, natural justice is the antithesis of arbitrariness.

33. Even in respect of non-justiciable directive principles embodied in Part IV of the Constitution, the same has now been resurrected as

enforceable fundamental rights, which would include right of education. Therefore, the contention of the learned counsel for the respondents that

Article 21 of the Constitution has no bearing on the present issue, is absolutely devoid of any substance. The respondents have been inconsistent

and self-contradictory in each of the counter and reply affidavit filed by them. 34. There is no bar under the prospectus prohibiting one person from

procuring more than one application form. The seating arrangements were as per the instructions of the 1st respondent. Further, the Court of

Inquiry has found that there was no mal-practice in the transport of tent material and the detailment of invigilators were proper. Reference can be

had to finding Nos. 3 and 5 at page 173 of the Court of Inquiry file. There is absolutely no evidence to prove the allegation of the respondents nor

has it been brought out during the examination of witnesses. The father of the petitioner in W.P. No. 11134 of 1995 has in categorical terms

deposed before the Court of Inquiry that he has no control over the entrance examination and he did not oversee the examination as DDMS

(Army). This statement has not been controverted. Therefore, I am of the view, that the use of the name of the father of the petitioner in W. P. No.

11134 of 1995 is motivated and with certain ulterior intentions.

35. There is also no evidence to show that the Invigilator Lt. Col. Sharma of Room No, 5 was absent for 1 1/2 hours. All witnesses including the

Chief Invigilator have stated that he was away for not more than ten minutes. Witness No. 31 has clearly deposed that Lt. Col. Sharma deposited

the papers after two invigilators, which should not take more than ten minutes. Witness No. 31 Lt. Choudhary is a Member of the Board of

Officers who were in charge of collection of the test materials. His evidence has been corroborated by Witness No. 14 Col. Rodriques, who was

the Presiding Officer of the Board of Officers, and Witness No. 3. Therefore, on a conjoint reading of all the statements of witnesses, it is clearly

established that the Court of Inquiry has failed to establish the use of any unfair means, that too connecting the petitioners. Therefore, in my

opinion, the respondents cannot rely upon the Court of Inquiry in bits and pieces and the same has to be relied on as a whole.

36. M. Arul, son of P. Muthu, Roll No. 0057827. resident of S-1082, Ayilpatty PACB Limited, Rasipuram, Salem District, was examined as Wit

ness No. 1. He states that he did not attend/appear for the entrance examination on 30-4-1995 at Madras as he chose to appear for Tamil Nadu

Professional Course for Engineering on the same day at Salem in preference to appearing for the AFMC entrance examination. He also states that

his father was never in Army but is working in a co-operative bank. He answered categorically that he never made any complaint. In fact, the

Court of Inquiry asked him to write a few lines in English and Hindi for comparison of the photostat copy of the complaint of Arul Murugan held by

the, Court. The witness expressed his inability to write or speak in Hindi, but, however, written a few lines, as dictated by the Court of Inquiry, in

English. The Court of Inquiry, in fact, compared the hand writing, which revealed that there is no similarity whatsoever between the witnesses"

hand writing in English and that of the complaint. The Court of Inquiry directed him to sign on a blank paper and observed that there is no similarity

in signature of the witness Arul and Arul Murugan.

37. Ravi Bhatt, petitioner in W. P. No. 11133 of 1995 was examined as Witness No. 10. His Roll No. is 23818. He is the son of Cap. T. D.

Bhatt. He has successfully qualified himself in the AFMC written test. He states that the Invigilators were always present in the room or the

verandah outside the room where a few students were seated, and during the examination CO MH Col. V. K. Varma along with another Army

Officer visited his class room for a short while. He felt that the paper was quite easy and he was very confident of passing. He came to know that

he had passed the written examination and so had his friend Arun Lakshmanan, son of Brig. Lakshmanan. To a question put by the Court of

Inquiry whether he has scored out and answered 12 or 13 answers at the end of attempting the whole paper or whilst he was attempting to answer

them initially, Witness No. 10 replied that he did all corrections while attempting the answers initially and not at the end. He further stated that

scoring out is permissible and when he found that the answer was not seemingly right, he cancelled it and endorsed a revised answer.

38. Arun Lakshmanan petitioner in W.P. No. 11133 of 1995, was examined as Witness No. 19. He categorically denied the suggestion that

anyone in the examination room assisted him in answering the questions. He also said that he did not allow any one to copy from his answer book.

He further said that he was satisfied with the performance and was hopeful of securing good marks.

39. Analysis of answer sheets of Roll Nos. 23814 to 23818 of Madras Centre (wards of M H Madras staff and DDMS HQ ATNKK and G

Area) is given from pages 90 to 96. Under the heading "General Analysis", it is stated that a detailed scrutiny of observations reveals that 44, 46,

47 and 46 identical final an-sw-ers were given by all four candidates in Pans, I, II, III and IV respectively indicating a strong similarity in the

answering pattern, leading to a suspicion of copying. The finding of the court of Inquiry pertaining to M H, Madras is as follows:

The complaint by Mr. Arul Murugan, son of Hony Capt. Murgan is pseudo anonymous. There is no person by name of Arul Murgan, son of

Hony Capt. Murgan who appeared in AFMC Entrance Exam. 1995. It has been confirmed by DGAFMS vide their letter No. 33073 /95/C/DG

AFMMS/DG ID dated 11 Jul 95 that no person by the above name appeared in AFMC Entrance Exam. (Witness Nos. 1 and 2). Paras 2 to 22:

x x x x x

23. Master Arun Lakshmanan, Miss Sonali Goswami and Miss Anitha Shankaran were not found confident of putting up as good performance if

asked to solve the same question paper again in the stipulated time. However, Master Ravi Bhatt and Miss Shilpa Goswami were very confident in

achieving nearly the same pass percentage or even better if made to answer the same question paper again (witness Nos. 9, 10, 19, 22 and 23).

24. Miss Anitha Shankaran could not even recollect a single question from Part IV-(General Knowledge) of the question paper. Miss Sonali

Goswami and Arun Lakshmanan recollected three to four questions whereas Mr. Ravi Bhatt and Shilpa Goswami could recollect 8-10 questions

of the General Knowledge portion of the AFMC Entrance Exam. paper (witness Nos. 9, 10, 19, 22 and 23).

Paras 25 to 30: x x x x

31. A strong suspicion is created that all five candidates have copied from each other based on findings in Paras 27, 28 and 29 above. This

suspicion is reinforced by the fact that candidates with Roll No. 23816 has scored out as many as 82 answers, done no rough work and revised

them in conformity with the answers of the other four candidates. Each candidate has even scored out some right answers and revised them to

wrong answers in conformity with the other four candidates (Analysis of answer sheets and Witness No. 4 Exhibit "R").

32. The strong suspicion of copying based on the analysis of answer sheets

coupled with the absence of the Assistant Invigilator from the class room during the exam and the Senior Invigilator after the exam. (both AMC personnel) gives further rise to suspicion that the copying could possibly have been organised soon after the exam. when other candidates had departed and before answer sheets were finally deposited in the

Control Room (witness Nos. 4 and 14 to 17). Paras 33 to 41: x x x x x

42. Copying if at all has taken place during the conduct of the exam. and not after the exam. as there is no link whatsoever that can be established

between the two JCO invigilators and those students (Witness Nos. 26, 27, 34, 35 and 36).

43. A fairly strong suspicion is created that all four candidates have copied from each other based on findings of Para 37 wherein all four

candidates have answered 46 out of 200 questions identically wrong which cannot be brushed aside as a mere coincidence as there were three

wrong answers available to choose from for each question. However, this suspicion though strong is not really reinforced or substantiated when

one views the number of answers scored out and revised which is less than 5% in all four cases. So also the right answers scored out and revised

with wrong answers can be considered minimal and could be coincidental giving the benefit of doubt to the students. Notwithstanding this the fairly

strong suspicion that four students have copied during the conduct of exam. persist (Analysis of answer sheets Exhibit "S").

Para 44 xxxxx

40. The opinion of the Court of Inquiry runs thus:

1. The Court is of the opinion that:--

a) The complaint of Mr. Anil Murgan, son of Hony Capt. Murgan (retd.) are pseudo-anonymous as a result of which no concrete evidence was

forthcoming from any witnesses to substantiate the allegation therein.

b) The undermentioned lapses took place in the conduct of the AFMC Entrance Exam. at Madras Centre which could possibly have facilitated

copying by candidates:

i) Non-detailment of an independent observer for the exam.

ii) Non-collection of excess unused test material soon after commencement of exam. and its retention with the invigilators till as late as 1600 h in

certain cases,

iii) Permitting an Assistant Invigilator of Room No. 5 to leave the class room during conduct of the exam.

iv) Lack of effective control on entry and exit of invigilators with test material in the Control Room after termination of the exam till final deposition

of test material at about 1630 h.

v) Absence of Lt. Col. K. Sharma, Senior Invigilator of Room No. 5 from the Control Room for over one hour with the used and unused test

material.

vi) Detailment of an AMC Officer and WCO as invigilators in Room No. 5 where wards of MH Madras staff and DDMS, ATNKK & G Area

were appearing for the exam.

vii) Laxity in invigilation in Room No. 41 based on analysis of answer sheets.

(c) There is a strong suspicion that candidates cluster No. 1 with Roll Nos.23814 to 23818 of Room No. 5 (wards of M H Madras Staff and

DDMS, ATNK & G Area) copied or were assisted in copying in an organised manner after termination of the exam. This aspect needs to be

given due cognizance while finalising the results. However, candidate Roll Nos. 23815 and 23818 have the potential of qualifying on their own

merit for which due consideration may be given.

41. It is, thus, seen, that the Court of Inquiry has clearly held that the complaint of Arul Murugan is pseudo anonymous and no concrete evidence

was forthcoming from any witness to substantiate the allegations contained therein.

42. The alleged complainant viz., witness No. 1 having come before the Court of Inquiry and having deposed that he has not written the complaint,

it is fallacious for the respondents, in my view, to contend that the complaint is not pseudonymous. The Court of Inquiry is only a fact finding body.

Therefore, it is all the more necessary that the petitioners should be informed as to the nature of the allegations which they are called upon to

answer in the form of a charge memo or a show cause notice. Further, the petitioners are also entitled to be informed in writing about the findings

of the Court of Inquiry together with a copy of the same calling upon them to show cause against the said findings. The respondents, in my opinion,

have miserably failed to follow the said procedure, which is unreasonable and unfair.

43. Since the findings of the Court of Inquiry and the evidence recorded at the time of enquiry were not furnished to the petitioners, the petitioner's

counsel was permitted to peruse the same at the office of the counsel for the respondents. The respondents' counsel claimed privilege stating that it

is a defence document and therefore the entire proceedings of the Court of Inquiry cannot be furnished to the petitioners. Thereupon, the

petitioners' counsel was permitted to peruse the same in the office of the counsel for the respondents.

44. As regards the arguments of the learned counsel for the respondents regarding the service liability. Mr. T. S. Sivagnanam, learned counsel for

the petitioners, contended that the petitioners are only students who had written the entrance examination for being selected to the undergraduate

wing of the AFMC. They are not commissioned officers and there is no contract applicable to them to be amenable under the Army Act. The

instructions to candidates clearly stipulate that the officer-in-charge of the local examination centre is the final authority to decide about the alleged

use of unfair means or violation of rules of examination. Therefore, to rely upon the concessions provided to medical students and the promotions

which they would be eligible after completing the 4 1/2 years course, does not, in my view, in any manner advance the ease of the respondents.

Even as per the prospectus, if a candidate chooses to withdraw from the college, he shall be liable to pay a sum of Rs. 3 lakhs. Therefore, to rely

upon post admission and post qualification matters does not make the candidate to sit for the entrance examination as amenable to the provisions

of the Army Act.

45. It is also contended that the Chief Invigilator and the Invigilator are the examination staff who are paid honorarium and who are entrusted with

the test materials to ensure the conduct of the examination and to redeposit the test materials correctly after the examination. The duties of the

Chief Invigilator, as stipulated by the 1st respondent in Instruction No. 9, page 8 of Ex, C of the Court of Inquiry proceedings, are mandatory with

personal and strict liability and no breach of trust is to be committed. It is further submitted that the Invigilator and Chief Invigilator are responsible

to detect use of unfair means and violation of the rules by candidates and report the same to the officer-in-charge. Similarly, candidates have also

got a right to appeal the officer-in-charge, Local Examination Centre against the decision of the Invigilator and Chief Invigilator. Therefore, the

Officer-in-charge, who acts on behalf of DGAFMS, Ministry of Defence, is the final authority and the said authority cannot be varied or cancelled.

46. The Chief of Army Staff does not have any liability to decide about the use of alleged unfair means or violation of rules of examination as there

is no express provision conferring jurisdiction on the Chief of Army Staff, which will also give a right to the candidate taking the examination to sue

the Chief of Army Staff. The litmus test to prove the said fact is to find out whether there is an examiner-examinee relationship between the Chief

of Army Staff and the Candidates to enable him to exercise jurisdiction over the examination matter.

47. It is argued that the allegation of use of unfair means being a quasi-criminal charge and therefore they are to be necessarily dealt with under

Para 541 of the Defence Service Regulation. The averment that there was no re-checking of answer sheet and only analysis has been carried out

on the result is misleading. The Court of Inquiry has, in fact, recommended two candidates with Roll Nos. 23815 and 23818 (petitioner in W. P.

No. 11133 of 1995) stating that they have got potential for qualifying and therefore, due consideration should be given to them. Thus, it is

manifestly clear that unless the Court of Inquiry has re-evaluated the answer sheets of the petitioners, they cannot assess as to their potentiality to

qualify for selection. Therefore, there has been a re-evaluation of the answer sheets, which is not permissible under the rules of selection.

48. It is argued by the learned counsel for the respondents that "unfair means appears to have been used". There is no proof even till date and the

entire proceedings are based on surmises and conjectures which is illegal. As already seen, the prospectus is the rule of selection and it is

mandatory to publish in the Govt. of India Gazette for bringing a civilian duty as a military duty since a military duty has a power to command with

power to arrest and use force and no such military command extended over candidates. In the absence of any gazette notification to that effect, as

rightly contended by the learned counsel for the petitioners, the examiners were not performing a military duty and the candidates were not

amenable to any defence laws. Further, it is mandatory to publish the jurisdiction of the Chief of Army Staff in the matter. In the absence of such

publication, I am of the view, a new authority cannot be clothed with jurisdiction over the examination matter especially when the examination

process had already commenced and results of written examination already declared.

49. The averments as regards the analysis of the answer sheets clearly establish that there is no similarity in answering pattern of the petitioners and

the Court of Inquiry or any other person have no jurisdiction to re-evaluate the answer sheets and that is precisely the reason, the evaluation is

done by computers to avoid subjective assessments. It appears that the answer sheets have been handled by several persons after results including

the members of the Court of Inquiry and therefore the petitioners cannot be penalised. Learned counsel for the petitioners has also denied that the

petitioners voluntarily gave statements. According to him, the petitioners were compelled to attend the Court of Inquiry as they were children of

Defence Officers, Further, they were not given any opportunity to cross-examine any witness especially where use of unfairness was sought to be

proved. As rightly pointed out by the learned counsel for the petitioners, in terms of the Army Order 69, no action can be taken by the

respondents on any anonymous or pseudonymous complaint. In fact, as already seen, the complainant himself has disassociated and denied having

made such a complaint.

50. The contention of the learned counsel for the petitioners that the selection procedure is governed by the prospectus and the instructions to the

candidates as published by respondents 1 and 2 and they are the only"" rules of selection merits acceptance. A Division Bench of this Court in Dr.

A. Rathnaswami v. Director of Medical Educations 1986 W L.R., 207 consisting of S. Nainar Sundaram, J., as he then was, and K.

Shanmukham, J., has held as follows:--

A prospectus issued with regard to admission to educational courses is a declaration to the candidates that a field for development of educational

potentialities is available for exploration and that there could be a chance of success. It is a piece of information. But at the same time, we shall not

belittle the significance of the need to set out in the prospectus itself a summary

or an essence of the norms and rules which should guide and which will be adopted for selection of the competitions in the field of exploration in educational development or at least indicate in the prospectus that there are norms and rules which shall govern. It is highly desirable that a summary or an essence of the relevant norms and rules governing such admissions are set out in the prospectus themselves or their existence at least is indicated therein. But an omission to do so shall not be taken advantage of by any one to negate and ignore the very norms and rules.

51. It is also not in dispute that no complaint from candidates in the same examination hall, or from the Invigilator or the Chief Invigilator had been given on the date of the examination or after that date to the local officer-in-charge as regards the alleged mal-practices. It is not in dispute that no such complaint has been given till the publication of the results. The Court of Inquiry has not reprimanded the Chief Invigilator for any lapse. In such circumstances, one could reasonably come to a conclusion that the examination was conducted in a fair and proper manner and no use of unfair means was there. The Chief Invigilator had observed specifically in the Court of Inquiry that there was no mal-practice and no report was given by him and he was also not obstructed from discharging his duties. All the witnesses have spoken to the effect that Lt. Col. Sharma had deposited the answer sheets within less than ten minutes approximately. In any event, the petitioners are not responsible for any such alleged delay due to any reason, though in this case, it was due to attending a call duty message, duly corroborated by Lt. Col G.P. Singh, witness No. 30 in Court of Inquiry.

52. The finding of the Court of Inquiry that Lt. Col. Sharma was absent for one hour is baseless and not supported by evidence and there is no report or record regarding this from any quarter or agency. It is proved that more than 45 Invigilators submitted answer sheets after Lt. Col. Sharma. We have already seen that the Court of Inquiry has re-evaluated the answer sheets, which is without jurisdiction. The prospectus does not permit re-avaluation. As rightly contended by the learned counsel for the petitioners, for the detection of use of unfairness or violation of the rules, it is the Invigilators and Chief Invigilator who are personally and mandatorily responsible since they are the examination staff paid honorarium by the

Govt. of India and since they are entrusted with the secret test material. The Officer-in-charge of local examination centre, on the report of the Invigilator or Chief Invigilator, may cancel the script of candidate and the candidate shall lose his claim for admission. Similarly, candidates may approach the Officer-in-charge of local examination centre for adjudication of any dispute between Invigilator and themselves and on hearing, they were free to obtain remedy from the officer-in-charge of local examination centre with regard to the alleged use of unfair means and violation of the rules. The decision of the officer-in-charge shall be final. The officer-in-charge of local examination centre for use of unfair means and violation of rules with adjudication and the appellate authority vested mandatorily with him, had final authority. This power of final authority of the officer-in-charge, under no circumstances, can be varied/taken away/ amended or cancelled or extinguished once exam. process has been set in motion, since it is a power on which the career of candidates is expedient and the very balance of convenience of examination rests. Thus, the local examination centre officer-in-charge acts as representative of DGAFMS and acts on behalf of DGAFMS with final authority to decide use of unfair means and violation of rules.

53. The Court of Inquiry has not made any adverse comments on the Chief Invigilator, which would mean that the examination process was proper and fair and there was no breach of conditions or trust. The Chief Invigilator has stated before the Court of Inquiry that there was no obstruction to his duties or mal-practice and that the going out of the waiting room prior to deposition of test material by Lt. Col. Sharma, the concerned Invigilator, still remaining under his supervision, was approximately around ten minutes to attend to a message on call, as later corroborated. The Court of Inquiry has also exonerated the Chief Invigilator. Therefore, it has to be presumed that there was no misuse of the test material or use of any unfair means. The duties of the Chief Invigilator are clearly spelt out in para 9 of DGAFMS Instruction t internal page 8 dated 2-3-1995 enclosed in Ex. C of the Court of Inquiry itself.

54. As already seen, the Court of Inquiry in its opinion has observed that no concrete evidence was forth coming from any witness to substantiate the allegations made against the petitioners and few other students. Even in the

opinion of the Court of Inquiry, there is only a strong suspicion that the candidates would have copied or were assisted in copying. It is settled law that suspicion alone, that too without any supporting evidence duly cross-examined, cannot be the basis for cancellation of selection since the alleged complaint was criminal in nature and legal evidence is necessary to connect the petitioners with the alleged mal-practice. On the question of mere suspicion, the career of the petitioners cannot be spoiled. In fact, the petitioners have passed in the examination. The petitioners have claimed that they have done extremely well in the written examination and were also given high ranks in the interview which was completed even before the commencement of the Court of Inquiry. Two seats have already been reserved for the petitioners in terms of the order passed by this Court. No prejudice would be caused to the respondents if the petitioners are admitted to the course.

55. In regard to the maintainability of the writ petitions raised by the learned counsel for the respondents, I am of the view, that the writ petitions are perfectly maintainable both in law and on facts. The Ministry of Defence having chosen to cancel the admission granted to the petitioners based on a Court of Inquiry proceedings, which is in total disregard to the principles of natural justice affecting the rights of the petitioners, the petitioners are entitled to approach this Court invoking its extraordinary jurisdiction under Article 226 of the Constitution. The respondents being the limb of the Government and: governed by the statutory provisions having a duty to act judiciously, are amenable to the writ jurisdiction of this Court. The respondents, though being Defence Department, are dealing with civilian rights in the instant case. Therefore, their actions can be certainly questioned before this Court under the writ jurisdiction.

56. The decision reported in *The State of Punjab Vs. Dewan Chuni Lal*, was a case of dismissal of a Police Sub-Inspector on charge of inefficiency and dishonesty based on adverse reports of superior officers. Such officers, though available, were not examined to enable the Police Sub-Inspector to cross-examine them. The Supreme Court held that the refusal of the right to examine such witnesses amounted to denial of reasonable opportunity of showing cause against the action of dismissal. The Supreme Court finally held that the dismissal was not legal. As

contended by the learned counsel for the petitioners, no opportunity was given to the petitioners to cross-examine the other witnesses and the

evidence of the other witnesses was recorded behind the back of the petitioners and was relied on by the Court of Inquiry to arrive at a finding.

Therefore, the procedure adopted by the Court or Inquiry is violative of the principles of natural justice and is liable to be condemned.

57. For the foregoing reasons, I am of the view, that the writ petitions are liable to be allowed and accordingly they are allowed and the impugned

proceedings of the 1st respondent disqualifying the petitioners are quashed, and the respondents are directed to admit the petitioners to the M. B.

B. S. Course at the Armed Forces Medical College, Pune-411 040, for the academic year 1996. No costs. Though the prayer in both the writ

petitions was for admission to the M.B.B.S. Course for the 1995 session, the same could not be granted because of the pendency of the writ

petitions till date. Hence, the above direction is given to admit both the petitioners to the M.B.B.S. course for the academic year 1996.

58. Order accordingly.