

(2004) 11 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No. 31326 of 2004 and W.P.M.P. No's. 37971 and 37972 of 2004

Rohit Sharma

APPELLANT

Vs

The Controller of Examinations and Others

RESPONDENT

Date of Decision : 22-11-2004

Acts Referred:

Citation : (2004) 5 CTC 744

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : T.R. Rajaraman for Chitra Sampath, for the Appellant; K. Srinivasan, for the Respondent

Final Decision : Allowed

Judgement

A. Kulasekaran, J.—The prayer in this writ petition is for a Writ of Certiorarified Mandamus to call for the records of the first respondent in

Ref. No. PU/CE/E14/03-04 dated 29.9.2004 and quash the same and consequently direct the first respondent to evaluate the papers of the

petitioner with reference to all the examinations and declare the results therefor.

2. The facts leading to the filing of the writ petition is that the petitioner joined the third respondent medical college in the year 2002-2003. He was

a rank holder and he secured 92.6% of marks in the Indian Certificate of Secondary Education Examinations, 1999 and school topper in Pine Hall

School, Dehradun. The petitioner has written second year M.B.B.S. Examination on 24.5.2004 to 3.6.2004 in the third respondent premises and

his registration Number was 226375066. On 1.6.2004, when he was writing microbiology Paper II Examination for a duration of two hours, he

attended two essays and two or three short questions, the invigilator stopped

him from writing the said examination on the ground that some extra papers namely Xerox copy was found below his desk. The invigilator obtained his signature in the said extra paper and sent him out immediately much earlier before the expiry of two hours. It is stated that the petitioner is neither the owner of the said printed extra paper nor copied it; that along with the petitioner, three other students occupied the same desk in which two from first year and one from second year M.B.B.S. The petitioner was served with show cause notice on 26.7.2004 and he has also submitted his explanation on 2.8.2004, however, the impugned order was passed on 29.9.2004 thereby the petitioner was found guilty and he was imposed the punishment of cancellation of all examinations written by him during May 2004 session and he was permitted to write the examinations to be held in December 2004, hence the present writ petition.

3. Mr. T.R. Rajaraman, learned Senior counsel appearing for the writ petitioner submitted that the impugned order is violative of principles of natural justice since the petitioner was not at all heard; that the petitioner was not furnished with the details with reference to the materials, based on which the impugned order has been passed and the copy of the report of the disciplinary committee; that the extra paper was not seized from the petitioner; that in the impugned order, no whisper as to what is the contents contained in the extra paper or what subject it relates to or any part of it was copied by the petitioner; that the petitioner is a meritorious student and the impugned order is a stigma attached with his career and prayed for quashing the impugned order.

4. The learned counsel appearing for the respondents, relying on the records and argued that the petitioner was served with the show cause notice, who in turn submitted his explanation and the same were considered by the respondent along with the extra papers found and justified the punishment imposed on the petitioner.

5. This Court directed the respondents to produce the original records , and accordingly they were produced. In original records, page No. 3 is the extra paper seized from the desk of the petitioner; page No. 13 is the show cause notice wherein it is stated the charge as "possessing incriminating material and/or copying therefrom" for which the petitioner was asked to show cause; page No. 23 is the explanation of the petitioner

dated 2.8.2004 wherein it is stated that the extra papers did not belong to him, but the same was traced under the desk, which he was not aware

nor copied even a single word from the said material; page No. 35 is the impugned order; page No. 57 is the answer sheet of the petitioner; page

No. 97 is the minutes of the meeting of the examination disciplinary committee held on 15.9.2004 at 2.30 p.m. Page No. 99 is the list of names of

the students who were charged for malpractices and punishment recommended in which serial No. 17 relates to the petitioner and the punishment

of "cancellation of current session only" is imposed.

6. On careful consideration of the arguments advanced on either side and on perusal of the records, I proceed to decide whether the impugned

order is valid or not.

7. In the show cause notice dated 26.7.2004, it is stated that the Chief Superintendent, University Examination of Mahatma Gandhi Medical

College and Research Institute, Pondy has reported that the petitioner possessing incriminating materials and/or copying therefrom while answering

Microbiology II Examination and he was directed to show cause within one week from the date of receipt of the communication as to why

disciplinary action should not be taken against him. On receipt of the said show cause notice, the petitioner submitted a reply on 2.8.2004 stating

that the "extra paper" did not belong to him nor he copied even a single word from the said paper. It is seen from the explanation of the petitioner

that he denied all the averments and categorically stated that it was not recovered from his possession nor copied a single word. Though it is stated

in the show cause notice that the petitioner possessing incriminating material and copying therefrom the fact remains that it was recovered only from

the desk where the other students also written examinations.

8. In his reply, the petitioner has categorically stated that he has no knowledge about the material at all nor copied even a single word. When such

a reply denying all averments is submitted, it is the bounden duty of the respondents to prove the charges levelled against the petitioner by letting

documentary evidence and if necessary oral evidence. The documents produced before me, which were relied on for passing the impugned order

do not support the case of the respondents.

9. It is evident that though it is alleged in the show cause notice some

incriminating materials was in possession of the petitioner, no detail about the said material is explained. Incriminating documents means the documents which have a tendency to expose the person to any criminal charge.

Copying therefrom means nothing more than a true re-production of the original. When such a serious charge is levelled against the petitioner, the

respondents should have explained the details of the incriminating materials. In this case, the respondents have not even mentioned whether the said

material relates to Microbiology II or any other subjects nor the contents are copied. The fact remains that the same was recovered or seized from

the desk where other students also permitted to sit and write the examinations. The above said details were not considered by the respondents

before awarding the punishment.

10. It is seen from Page No. 99 of the records that the disciplinary committee have given the list of candidates involved in malpractice, subject

relating to it and the nature of punishment recommended. On careful perusal of the said minutes, I am of the considered view that the committee

has not at all applied its mind before recommending the punishment. No details mentioned to arrive at a conclusion for recommending the

punishment. The other authorities who imposed the punishment also just blindly followed the recommendations made by the committee without

application of their mind. It is also to be mentioned that no proper opportunity was afforded to the petitioner before imposing the punishment.

11. In the above circumstance, I have no other alternative except quashing the impugned order and accordingly the same is quashed. With the

result, the punishment of cancellation of the examinations taken by the petitioner in May 2004 is set aside. The petitioner was not permitted to write

the Microbiology II examination on the false impression that he was in possession of extra materials and copied therefrom, hence, I direct the

respondents to permit the petitioner to write the microbiology II subject in the ensuing examination. It is to be noted that the said appearance of the

petitioner in the forthcoming examination shall be treated as first appearance.

12. The Writ Petition is allowed in the above terms. No costs. Consequently, connected WPMPs are closed.