

(2011) 02 DEL CK 0207
In the Delhi High Court
Case No : Writ Petition (C) 1248 of 2010

Saleem Khan

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Citation : (2011) 02 DEL CK 0207

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Kiran Bhardwaj, for the Appellant; Mohinder J.S. Rupal, for R 1 to R 3, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner had appeared in the entrance test held by the Respondent University on 16th January, 2010 for admission to post graduate degree course in the subject of Moalejat of Unani Medicine in The Ayurvedic & Unani Tibbia College affiliated to the Respondent University. In the result of the said entrance test declared on 19th January, 2010, the Petitioner obtained the maximum marks and was shown with the first rank. It is the case of the Petitioner that notwithstanding the declaration of the result, no counselling as per schedule was held and on the contrary on 16th/17th February, 2010, it was announced that the examination held on 16th January, 2010 stood cancelled and will be again held on 6th March, 2010; the candidates were informed that the admission tickets and the roll numbers earlier issued shall remain valid for the re-examination also.

2. Contending that the communication dated 16th/17th February, 2010 was non speaking and the Respondents could not have cancelled the examination, in the result whereof the Petitioner had stood first, the present petition was filed.

3. The petition came up before this Court first on 3rd March, 2010 when the counsel for the Respondents appearing on advance notice informed that the

examination held on 16th January, 2010 had been cancelled on the basis of complaint received. The matter was posted to 4 th March, 2010 to enable the counsel for the Respondents to obtain instructions.

4. On 4th March, 2010, the original record of the Respondent University relating to the examination was produced before this Court and persued. This Court recorded that a complaint had been made by one of the faculty members with respect to the manner in which the entrance examination was conducted on 16th January, 2010; that an Enquiry Committee consisting of i) Dean, Faculty of Medical Sciences, University of Delhi ii) The Registrar, University of Delhi and iii) Dr. S. Mehtab Ali, Head of the Department of Tashreeh Wa Munafeul - Aza Jamia Hamdard was constituted to investigate into the matter and the alleged leakage of question paper; that the Committee also examined the previous record of the Petitioner herein as well as the Petitioner No. 2 at the time of filing of the petition and who has since withdrawn from the case (and who had secured second rank in the entrance test held on 16th January, 2010), as well as of another student; that after detailed examination, the Committee was of the unanimous view that the allegations made in the complaint could not be ruled out and the entrance test should be re -held with outside paper setters and moderators and the fresh entrance test was accordingly ordered. The counsel for the Petitioner contended before this Court on 4th March, 2010 that the complaint had been managed by those who had failed in the entrance test. However, this Court not finding any infirmity and illegality in the decision making process, dismissed the application of the Petitioner for interim relief for restraining the re-examination scheduled on 6th March, 2010. The said order has attained finality.

5. The matter was adjourned from time to time and opportunity was given to the Respondents to file counter affidavit. No counter affidavit has been filed till now.

6. The counsel for the Respondents 1 to 3 has contended that though the Petitioner appeared in the re-examination held on 6th March, 2010 but failed to secure admission. He contends that the Petitioner has not challenged the re-examination and not im leaded the candidates selected therein and the present petition with respect to the entrance examination held on 16th January, 2010 for the one year post graduate course has since become in fructuous. It is further informed that admissions for the subsequent academic year have also since been made.

7. None of the aforesaid contentions have been controverted by the counsel for the Petitioner. It is however contended that upon this Court finding the cancellation of the examination in which the Petitioner had stood first, to be bad, the Petitioner would be entitled to admission. The only other argument raised is of the Respondent University while cancelling the examination having not given the reasons therefor.

8. The Supreme Court in The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, held that if it is not a question of charging anyone

individually with unfair means but to condemn the examination as ineffective for the purpose it was held, it is not necessary to give an opportunity to the candidates if the examination as a whole is being cancelled. It was held that where no particular candidate is charged with use of unfair means, it would be wrong to insist that a detailed inquiry should be held or opportunity given to the candidates who had appeared in examination. It was further held that an examination body is entitled to cancel its own examination when it is satisfied that the examination was not properly conducted. It was yet further held that an inquiry with a right to representation is not required to precede every decision and the universities are responsible for their standards and the conduct of examination.

9. On the aspect of giving of reasons, the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, held that omission to record reason is not necessarily illegal or violative of natural justice and depends upon the nature of the inquiry and the effect of the decision on the rights of the person and attendant circumstances. The Supreme Court in Madhyamic Shiksha Mandal, M.P. Vs. Abhilash Shiksha Prasar Samiti and Others, deprecated the order of High Court interfering with the decision taken by admission Body to treat examination as cancelled ; to the same effect is the judgment in Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh v. Vaibhav Singh Chauhan (2009) 1 SCC 59. In fact recently in Chairman, All India Railway Rec. Board and Another Vs. K. Shyam Kumar and Others, Wednesbury principles were applied while reviewing the decision for conducting the re-test.

10. There is thus no merit in the grievance raised. The order in the present case for holding the re-examination is found to be fair, reasonable, balanced and harmonious. Rather, in the face of serious allegations of leakage of question paper, this Court would be perpetuating an illegality by allowing such exam to stand.

11. The Petitioner even otherwise cannot claim admission in the subsequent academic year, in the entrance test whereof he has not appeared. I also do not agree with the contention of the Petitioner that the Circular cancelling the examination is bad for non giving of reasons. Admittedly counselling pursuant to the entrance test had not been held and the Petitioner had not been admitted. Neither the Petitioner nor any other candidate thus has any right to admission. This Court on 4 th March, 2010 on perusal of the record produced by the University has accorded satisfaction with the process of making the decision for cancellation of the examination. The said order though on the application for interim relief is good for the present purposes also.

The petition is without any merit and is dismissed.

No order as to costs.