IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7692 of 2020

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1. Akhalesh Kumar Son of Late Ram Chandra Rabidas, resident of Village- Ranipur, P.O.- Ranipur, P.S.- Islampur, District- Nalanda.
2. Deo Kumar Singh, Son of Shri Sikandar Singh, resident of C/o Matrichaya Opposite Donar Petrol Pump Darbhanga, P.S. Sadar, District- Darbhanga.
3. Himanshu Kumar Son of Late Kapildeo Paswan, resident of Village- Nanhkumandal Tola, P.O.- Durgapur, P.S. Mufasil Khagaria, District- Khagaria.
4. Sanjay Kumar Sahni, Son of Sri Bhola Sahni, resident of Ward no. 8, Gram Ajnauli, P.S. Barha Benipatti, P.S. Bisfi, District- Madhubani.

... ... Petitioner/s

Versus

1. Aryabhatta Knowledge University Mithapura, Patha through its Vice-Chancellor.
2. The Vice-Chancellor, Aryabhatta Knowledge University, Mithapur, Patna.
3. The Examination Controller, Aryabhatta Knowledge University, Mithapur, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 7708 of 2020

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1. Dr. Vinita Prasad daughter of Shri Ram Chandra Prasad, wife of Dr. Nakul Choudhary, at present residing at PMCH Campus, Qtr. NO. 7, MCPW, Ashok Rajpath, District-Patna.
2. Shaivya Saurav, Daughter of Binay Kumar Hira, resident of Village- Paduma, District-Madhubani at present residing at Kamle Road, Vidyanagar, P.S.-Jainagar, District-Madhubani.

... ... Petitioner/s

Versus

1. Aryabhatta Knowledge University Mithapura, Patna through its Vice-Chancellor.
2. The Vice-Chancellor, Aryabhatta Knowledge University, Mithapur, Patna.
3. The Examination Controller, Aryabhatta Knowledge University, Mithapur, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 7811 of 2020

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Dr. Pant Suresh Keshava S/o Rajeshwar Prasad R/o Village-Aungari, P.S. Aungari, District-Nalanda.

... ... Petitioner/s

Versus

1. Arayabhatta Knowledge University Mithapur, Patna through its Vice Chancellor
2. Vice Chancellor, Arayabhatta Knowledge University, Mithapur, Patna.
3. Examination Controller, Arayabhatta Knowledge University, Mithapur, Patna.

... ... Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 7692 of 2020)

For the Petitioner/s : Mr. Anil Kumar Singh
Mr.Bela Singh, Adv.

For the Respondent/s : Mr.Priyank Deepak, Adv.

(In Civil Writ Jurisdiction Case No. 7708 of 2020)

For the Petitioner/s : Mr. Anil Kumar Singh, Adv.
: Ms.Bela Singh, Adv.

For the Respondent/s : Mr.Awadhesh Kumar, Adv.

(In Civil Writ Jurisdiction Case No. 7811 of 2020)

For the Petitioner/s : Mr. Sandip Kumar, Adv.
: Mr.Alok Kumar @ Alok Kr Shahi, Adv.

For the Respondent/s : Mr.Awadhesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 19-02-2021

1. Heard Mr. Anil Kumar Singh and Mr. Sandip Kumar, learned counsel for the petitioners and Mr. Awadhesh Kumar, learned counsel for the respondents.

2. The petitioners had approached this Court initially as no decision was being taken by the Vice

Chancellor of the Arayabhatta Knowledge University on the representations preferred by them for re-evaluation / re-totaling of their answer sheets.

3. During the pendency of the writ petition and after first hearing before this Court, the petitioners were intimated that their answer-sheets had been sent for re-evaluation / re-totaling before the grievance committee, constituted for the purpose and based on that report, which indicated that there was no need for any interference with the marks allotted to the petitioners, the Vice Chancellor rejected the contention of the petitioners that interference in the assessment was required.

4. The aforesaid order of the Vice Chancellor dated 15.09.2020 is under challenge.

5. Learned counsel for the petitioners have taken great pains to demonstrate before this Court that there was no proper assessment of their answer-sheets and almost all the petitioners, who have had brilliant academic record, have failed by slender margin in one or the other papers. To support their contentions, the petitioners have brought on

record the answer-sheets which they have obtained under the R.T.I. and have raised grievance that there are no internal markings; there is evidence of interpolation in the O.M.R. sheets and at many places, the re-writing /cuttings have not been countersigned. In one of the papers brought on record by one of the petitioners, there is an apparent mistake in addition of marks awarded in different questions. The initial plea of the petitioners was that the Vice Chancellor had apparently told them that no interference would be made without the intervention of the Court but shortly thereafter, they were intimated, as noted above, that their answer-sheets were sent to a duly constituted committee which had reported that there was no need of re-evaluation, re-look or re-totaling.

6. However, the petitioners are very vehement in their contention that such an order under Section 21 D of the Statutes of the University by the Vice Chancellor came at the most inopportune time i.e. only after first hearing in the writ petition was done. Learned counsel for the petitioners, therefore state that the order impugned is mechanical and

appears to have been taken out of rigid stand that the decision of the University cannot be faulted with by the students / petitioners / examinees.

7. Mr. Anil Kumar Singh, learned counsel for some of the petitioners has raised an additional ground that according to the Medical Council of India Post Graduate Medical Education Regulation 2000, as amended upto date in 2018, there is a mandatory requirement of appointing / hiring at least four examiners in each subject, out of which, at least fifty percent are compulsorily to be the external examiners. The rules further mandate that the external examiners have to fulfill certain criteria, which have been listed in the rules. Only under exceptional circumstances, examination could be held with lesser than four examiners (three examiners) and that also when two of them are external examiners. In that event, the Medical Council of India is required to be intimated about the justification of conducting examination in that manner and in that case, result shall be published with the approval of Medical Council of India.

8. Mr. Singh, learned advocate contends that the aforesaid requirement is not optional ; rather mandatory. The petitioners claim that if such requirement has not been fulfilled, the entire evaluation, then, becomes suspect in the eyes of law, even if it be with respect to the entire batch, which may have many such examinees.

9. Faced with such an argument, this Court directed the learned counsel for the Arayabhatta Knowledge University to provide the list of examiners which direction was promptly complied with. The list of the examiners clearly indicates that for different subjects, there were only one examiner.

10. Mr. Awadhesh Kumar, learned Advocate for the University in support of his contention that the examination has been held in proper manner, has submitted that the requirement of four examiners or in special circumstance, three examiners is only limited for the time when the examination is conducted but not for evaluation of papers.

11. This Court is absolutely reluctant and loath to accept this interpretation of the rules. Mr. Kumar had tried

to contact the office of the Medical Council of India to have a clear instruction with respect to the interpretation of the aforesaid rule of the Medical Council of India but he could not get any response.

12. This Court is *prima facie* of the view that such an interpretation is highly meretricious and is not acceptable for the reasons that invigilation while conducting an examination at a centre and evaluation of answer-sheets are two different aspects of conducting an examination and by no stretch of imagination could these be taken to be synonymous.

13. The contention of the petitioners is further attempted to be repelled by the University on a technical ground that the decision of the Vice Chancellor under Section 21D of the Statutes of the University or of the decision of the scrutiny committee, so constituted for the purpose of looking into the grievance of the students, is limited and circumscribed by the grounds raised in the representations. To further specify, Mr. Kumar, learned counsel for the respondent / University has argued that the

representations of the petitioners only seek re-evaluation and, therefore, now the petitioners cannot raise the grievance that the assessment made by the examiners in the first instance and verified by the scrutiny committee require interference because it was not done properly in as much as requisite number of examiners were not engaged to evaluate the answersheets.

14. It would be relevant here in this context to state that the petitioners were not aware whether such rule of the University requiring hiring of at least four examiners was followed. Their contentions were based solely on the report of a private hand-writing expert who was shown the answer-sheets. His report clearly indicates that from the markings on the answer-sheets, there could be no manner of doubt that it was in the hand-writing of a single person/examiner.

15. On such assessment, this Court had called for a categorical information from the University and the report, which has been submitted by learned counsel for the respondent / University indicates that every subject had solitary examiners. That this Court is not going into this

question right now is only for the reason that delving any further on the issue would render the entire examination of post graduate course bad in the eyes of law, which would neither be conducive for the students nor for the University. This Court leaves the issue at that but the University ought to be careful and should endeavor to abide by the M.C.I. Rules in totality. There can be no justification whatsoever for breach of any one of the rules which are couched in mandatory terms.

16. Now to the meat of the matter.

17. In one of the writ petitions, it has been contended that the answer-sheets so obtained under the R.T.I. was shown to a professor of the subject, who was of the view that the petitioners ought to have been awarded more marks in the theory papers.

18. This assessment of an examiner about whom the Court has no idea cannot be the basis for doubting the quality / nature of assessment. Apart from this, Mr. Kumar learned counsel for the respondent / University has brought on record the constitution of the grievance committee, which

has scrutinized the answer-sheets of the petitioners and has also furnished the report submitted by such committee. With respect to the petitioner, the committee is of the considered view that no interference is required with respect to their assessment, re-evaluation and retotalling.

19. The report of the scrutiny committee was shown to the learned counsel for the petitioners, who have raised an objection that the report so furnished in the Court by Mr. Kumar, learned counsel for the respondent / University is not complete in as much as it is not known as to how that decision was arrived at.

20. This Court has no manner of doubt that there is nothing in the Statutes of the University which obligates the grievance committee so constituted for the purpose to state in detail the reason for it to come to a particular conclusion. In fact, there is also no provision in the Statutes of the University, which compulsorily require such grievance committee to consist of experts of the subjects in which the grieving examinees have failed and want their answer-sheets re-evaluated.

21. Under such circumstances, it would be difficult for this Court to place no confidence on the report of the grievance committee or the consequent decision of the Vice Chancellor of accepting the report of the grievance committee. However, certain things have become glaring and conspicuous while hearing this batch of writ petitions. In many of the answer-sheets, there are no internal markings. The interpolation in the first page of the O.M.R. sheets, in some of the answer-books have not been signed/ countersigned. The decision of the Vice Chancellor came shortly after the first hearing was done in thesecases. If the papers of the examinees were examined by the grievance committee/scrutiny committee, it would for sure have noticed the faulty addition of marks in one of the papers. These lapses are apparent and they are not indicative of any hawk /dove effect in the evaluation system in the examination, much less in a professional post-graduate course.

22. This court is conscious of the fact that the scope of judicial review in the matters of re-examination and re-

evaluation is very limited. The Hon'ble Supreme Court in **Ranvijay Singh and others vs. State of Uttar Pradesh and Others (2018) 2 SCC 357** after referring to various decision on the issue viz. **Himachal Pradesh Public Service Commission vs. Mukesh Thakur (2010) 6 SCC 375; Kanpur University vs. Samir Gupta (1983) 4 SCC 309; Maharashtra State Board of Secondary and Higher Secondary Education vs. Paritosh Bhupeshkumar Sheth (1984) 4 SCC 27; and Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission (2004) 6 SCC 714** has noted down the broad propositions on the subject under discussion. For ready reference and also for the sake completeness, paragraph -30 of the afore-noted judgment is being extracted herein below:-

> *"30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet*

as a matter of right, then the authority conducting the examination may permit it; (ii) If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed; (iii) The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate – it has no expertise in the matter and academic matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate".

23. The Hon'ble Supreme Court has summarized in

absolute and clear terms that re-evaluation of an answer-sheet or its scrutiny can only be directed if the rules so permit. That also can only be resorted to if it is demonstrated unmistakably, without inferential process of reasoning or rationalization that a material error has been committed. The formulations clearly spell out that the Courts do not have the necessary expertise and the wherewithal to asses the evaluation in a subject or assess the quality of assessment by experts of the subject. Though the issues in Ranvijay Singh (supra) were different and related to the dispute over the correct answers in the key provided by the examiners but the proposition that the presumption should be in favour of the examination taking body remains constant so far as the examination / evaluation is concerned. The Hon'ble Supreme Court has also in a way castigated that despite several decisions of the Supreme Court, interference is made in the assessment at the drop of the hat. However, after having said that, the Hon'ble Supreme Court has also underlined the importance of interference in such matters if it is required on a deep scrutiny by a Court of law. There

could be no fetters on the vast reservoir of powers under Article 226 of the Constitution of India while the same is being exercised in special cases.

24. That this Court has left the issue with respect to the interpretation of the M.C.I. Rules requiring minimum number of examiners for the present or else it would be undermining the efforts of the examination taking body in conducting the examination especially the enormity of the entire process and the uncertainty, which it would bring in its wake in the minds of students who have passed the examinations and have gone to the higher class.

25. This Court is absolutely clear in its mind that it is examining the contention of the petitioners with respect to their answer-sheets and has not in any manner put the University or the examiners in the dock. They have not been rendered the subjects of inquiring at the hands of the Court.

26. But this indulgence may not be misunderstood as ratification of every lapse that the University has committed or would commit in future.

27. Mr. Sandip Kumar, learned counsel for the

petitioners in one of the writ petitions has submitted that in many cases, different Benches of this Court have directed the Vice Chancellor to re-consider the cases of the respective examinees with respect to the re-evaluation of their answer-sheets.

28. Mr. Awadhesh Kumar, learned counsel for the respondent / University on the contrary has pointed out that the same Bench, has in some of the cases, refused to interfere on the ground that no malafides have been alleged or could be discerned from the report of the scrutiny committee or from the decision of the Vice Chancellor, who has exercised his power under Section 21 D of the Statutes of the University.

29. Be that as it may, since this Court has found that there are lapses in the evaluation and which have not been noticed by the grievance committee / scrutiny committee, this Court deems it appropriate direct the Vice Chancellor of the Arayabhatta Knowledge Univesity for re-considering the case of the petitioners afresh with respect to their grievance. Should the Vice Chancellor of the University

take a decision that a re-evaluation / re-totaling is required, he may refer the answer-sheets to the same scrutiny committee, which was constituted for the purpose as this Court has apparently not found anything to express its dissatisfaction over their assessment. In case, on a reconsideration also, it is found that no interference is required in the case of the petitioners, that should put a quietus to the dispute.

30. At this point, learned counsel for the petitioners have informed this Court that after having failed in one or the other of the papers, the petitioners have re-appeared in the examination. There would arise some difficulties if on a reassessment, the petitioners again fail and in the examination in which they have appeared afresh, they pass. Which result shall prevail needs to be clarified.

31. This Court is firmly of the view that the University is not required to take any rigid or pedantic stand because it ought to be conscious of the fact that it is dealing with the lives of the students, who are the wealth of the nation. The growth of a University is largely dependent on

the quality of the students that it churns out. University does not remain a place only for learning the tricks of the trade or expertise in a particular field but it also must endeavour to assist the students in developing a complete personality, specially in the subject which they are pursuing. If a University has a large number of grieving students that they have not been assessed properly, it would not be good for the status and reputation of the University. At the same time, every self-assessment of the student is not to be taken as the correct assessment. This is a tight rope walk for any educator or the University.

32. Keeping this in mind, this Court has given a direction to the Vice Chancellor to reconsider the case of the petitioners with the liberty to him to take the decision to his own satisfaction. While directing for reconsideration, the Court has been rather careful in not placing unnecessary and undue sympathy over the claim of the students. In case the petitioners pass in their re-assessment if it is ordered, that should be taken as their marks and no rigid stand be taken by the University that if they fail in the re-assessment

but pass in the re-examination, the benefit of the result in the fresh examination shall not be accorded.

33. This Court clarifies that this order may not be treated as a precedent.

34. The writ petition stands disposed of with the aforesaid observation.

(Ashutosh Kumar, J)

sunilkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
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