

HIGH COURT OF MADHYA PRADESH : AT JABALPUR

Writ Petition No : 3384 of 2014

Divyanshu Gupta and others

- V/s -

Barkatullah University and others

Writ Petition No : 3647 of 2014

Raza Khan

- V/s -

Barkatullah University and others

Present : **Hon'ble Shri Justice Rajendra Menon.**
 Hon'ble Shri Justice A.K. Sharma.

In Writ Petition No :: 3384/2014.

Shri Ajay Mishra, Senior Advocate, with Shri Vinay Choubey and Shri Gaurav Tiwari for the petitioner.

In Writ Petition No :: 3647/2014.

Shri Kunal Dubey for the petitioner.

In both the cases:

Shri Mahendra Pateiya for the respondents.

Whether approved for reporting:

Yes / No.

ORDER
24/09/2014

As common questions are involved in both the cases, they are being heard analogously. For the sake of convenience, pleadings and documents available in the record of Writ Petition No. 3384/2014 are being referred to in this order.

2- Pointing out certain discrepancies and irregularities in the MBBS – Final (Part I) Examinations 2013, which was conducted in

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December 2013 by the authorities of Barkatullah University, petitioners have filed this writ petition.

3- Shri Ajay Mishra, learned Senior Advocate, took us through the documents and material available on record and pointed out the following two irregularities in the conduct of the Examination:-

- (i) It was submitted by learned Senior Advocate that in the Subject of Community Medicine – bearing Code MMS-304 Paper I, the maximum marks fixed for the Examination was 60, and a candidate to be eligible for being declared as pass was required to obtained 50% marks i.e... 30 marks out of 60. Learned Senior Advocate took us through the marks awarded to each question as is indicated in the question paper – Annexure P/1, and demonstrated that the maximum marks as per the questions and allocation of marks is not 60, but is only 54 and on verification of the same, the contention of Shri Ajay Mishra is found to be correct.

Learned Senior Advocate, accordingly submitted that once there was an error in the allocation of marks for the question paper and as it was contrary to the indications of maximum marks given in the question paper, the consequential valuation would also be irregular and illegal.

- (ii) The second contention advanced by learned Senior Advocate was that in Paper II bearing Code-MMS-305 i.e... Community Medicine, Question No.1 pertained to certain topic which was beyond the syllabus. Inviting our attention to the Syllabus prescribed – Annexure P/2, learned Senior Advocate pointed out that there is no subject or topic known as FHC (S), as is evident from the Syllabus, inspite

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thereof a question on the aforesaid topic/subject bearing 12 marks was asked, which is also illegal.

4- Accordingly, pointing out that these irregularities have been committed in the examination, this writ petition has been filed.

5- On notices being issued, respondents have filed reply and in paragraph 3 of the reply, respondents with regard to the first irregularity point out that the matter was referred to the Results Committee and the Committee gave an opinion that with regard to the first irregularity, '3 marks' allotted to Question Nos. 3 and 4 be made '4 marks' each so that the maximum marks comes to 60. It is stated that in accordance to the same, the valuation has been undertaken.

6- The second objection is answered by contending in paragraph 4 of the return, that during the time of examination as no objections were received in this regard, the objection cannot be considered now after the examination is over and the results are declared.

7- Shri Ajay Mishra, learned Senior Advocate, refuted both these contentions and by referring to the rejoinder and the documents filed alongwith the return, tried to demonstrate before us that no decision of the Results Committee is brought on record; the manner in which instructions were given after decision of the Results Committee is not indicated; and, by referring to Annexure R/3/1, a communication made by one of the valuers of the First Paper – Dr. Sunil Nandeshwar, learned Senior Advocate prima facie tried to demonstrate before us that the contention with regard to referring the matter to the Results Committee and taking a decision seems to be unsustainable. Learned Senior Advocate further points out that in an unauthorized manner, the Head of the Department is seen to have issued oral instructions and directions for valuation, which is also not informed to the petitioners' inspite of seeking all necessary documents and answer-books under the Right to Information Act.

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8- As far as the second objection is concerned, learned Senior Advocate points out that the students had raised objections, but nothing was done.

9- During the course of hearing Shri Mahendra Pateriya, learned counsel for the respondents, tried to rebut the contentions raised by Shri Ajay Mishra, learned Senior Advocate, by producing photocopies of documents to say that a meeting of the Results Committee was undertaken and it is only thereafter a decision was taken.

10- We have gone through all these papers and we find that certain correspondence had taken place with regard to allocation of marks for the subject bearing Code MMS-304 [Community Medicine] and based on the aforesaid correspondence, which mainly consists of complaint by the students, a notice fixing the meeting of the Results Committee was scheduled on 3.3.2014, at 3.00 PM, and some resolution of the Results Committee is produced which is dated 3.4.2014.

11- However, if this is the position, then it has to be held that the meeting of the Results Committee was conducted on 3.3.2014 i.e... after filing of this writ petition and passing of interim order by this Court on 28.2.2014. There is nothing available on record to show that a meeting of the Results Committee was held before valuation of the answer books and declaration of the results and the correction as indicated in the return was ordered even before the valuation of answer books. On the contrary, the entire note-sheet which starts from 18.2.2014 speaks about error in the question paper and steps to be taken for its correction and there is nothing to show that before declaration of the results or even before valuation of the answer-sheets the matter was placed before the Results Committee and a decision taken. As far as the second objection is concerned, there is nothing to indicate that the complaint of the students was ever placed before the Results Committee, for its consideration.

12- Taking note of all these circumstances, we are of the considered view that the respondent/University has not corrected the error pointed out by the petitioners in accordance to the requirement of

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law and, therefore, now we propose to do so by issuing appropriate directions.

13- Accordingly, we issue the following directions:-

- (i) On the petitioners' filing a certified copy of this order alongwith detailed representation and objections in the matter, the Registrar of Barkatullah University shall place the matter before the Results Committee of the examination in question and the said Committee after examining both the objections i.e.. with regard to the discrepancy in allocation of marks in the subject of Community Medicine bearing Code MMS-304, so also the objection with regard to Question No.1 in the subject bearing Code-MMS 305 being out of syllabus, shall examine the issue and take a decision in the matter within a period of one week from the date of receipt of instruction and papers from the Registrar.
- (ii) The entire exercise for taking a decision by the Results Committee as indicated hereinabove shall be concluded within a period of 15 days from the date of receipt of certified copy of this order, by the Registrar of the University.
- (iii) Thereafter, the recommendation of the Results Committee shall be placed before the Appropriate Committee of the University and a final decision on the recommendations shall be taken within a period of one week.
- (iv) In case, the Results Committee directs for revaluation of the answer books, then the entire steps for revaluation shall be undertaken and concluded within a period of one month from the date of decision taken by the Appropriate Committee; in any case, the entire exercise for complying with the aforesaid directions shall be concluded within a period of 45 days from the date of receipt of certified copy of this order.

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- (v) Based on the exercise so undertaken, if there is any change of the result of any of the students, changed result shall be published and the corrected mark-sheet issued to the concerned students. Else, they will be intimated the result of the action taken by the Registrar of the University.

14- With the aforesaid observations, both these petitions stand disposed of.

(RAJENDRA MENON)
J U D G E

(A.K. SHARMA)
J U D G E

Aks/-