

HIGH COURT OF MADHYA PRADESH : JABALPUR

(Division Bench)

W.P. No.6768/2015

Niharika Tiwari Petitioner

Vs.

The State of Madhya Pradesh
and others Respondents

W.P. No.6772/2015

DishaSethiya Petitioner

Vs.

The State of Madhya Pradesh
and others Respondents

W.P. No.6774/2015

YashVijaywargiya Petitioner

Vs.

Medical Education Department
and others Respondents

W.P. No.6775/2015

AkashParashar Petitioner

Vs.

The State of Madhya Pradesh
and others Respondents

W.P. No.6777/2015

Sameer Tiwari Petitioner

Vs.

The State of Madhya Pradesh
and others Respondents

W.P. No.18422/2014

Ajeet Singh Yadav Petitioner

Vs.

The State of Madhya Pradesh
and others Respondents

W.P. No.2053/2015

RavinaAsrani Petitioner

Vs.

The State of Madhya Pradesh
and others Respondents

W.P. No.2143/2015

Gunita Bansal Petitioner
Vs.
The State of Madhya Pradesh
and others Respondents

W.P. No.2709/2015

Ku. Harshita Mishra Petitioner
Vs.
The State of Madhya Pradesh
and others Respondents

W.P. No.5710/2015

Varsha Verma Petitioner
Vs.
The State of Madhya Pradesh
and others Respondents

W.P. No.6769/2015

Chitrangana Jain Petitioner
Vs.
The State of Madhya Pradesh
and others Respondents

W.P. No.7133/2015

Roshni Patel Petitioner
Vs.
The State of Madhya Pradesh
and others Respondents

Coram :

Hon'ble Shri Justice Hemant Gupta, Chief Justice
Hon'ble Shri Justice Sanjay Yadav, J.

Whether approved for reporting – Yes

Law laid down :- The OMR answer sheets having scanned twice one after, interpolation in the OMR answer books was found to be a justified case for use of unfair means and thus order of cancellation of admission was maintained.

Use of white fluid in the OMR answer sheets have been found to be valid invocation of unfair means as except the black ballpoint pen and the admit card no other accessories were permitted in the examination hall, therefore, the find recorded by the Vyapam that the answer sheet with use of white fluid has been scanned after interpolation in the OMR answer book cannot be said to be illegal.

The third set of cases where OMR answer sheet was interpolated even before the first scanning, such finding of interpolation was recorded on the basis of use of different pens. The finding of Vyapam that the percentage of correct answers with second pen which was more than 96%, even in such cases, the decision of the Vyapam for cancellation of admission

was upheld. It was held that in exercise of powers in judicial review, the finding of the examining body regarding fraud cannot be said to be illegal.

It was also held that the Civil and criminal proceedings are mutually exclusive and civil action on the same set of facts in respect of which criminal case has been registered is not an impediment. The action of cancellation of the result on account of use of unfair means is a civil action, whereas conspiracy in manipulating the result is a criminal proceedings.

Significant Paragraph(s) – 15, 17, 21, 24 and 25.

ORDER

(Delivered on this day of July, 2017)

Per Hemant Gupta, Chief Justice

This order shall dispose of the following writ petitions challenging the cancellation of result of the entrance test for the reason of use of unfair means vide order dated 31.12.2014. W.P. No.6768/2015; W.P. No.6772/2015; W.P. No.6774/2015; W.P. No.6775/2015; and W.P. No.6777/2015 challenges the order dated 31.12.2014 which are in short called as Group – 1 cases. Whereas, in W.P. No.18422/2014; W.P. No.2053/2015; W.P. No.2709/2015; W.P. No.2143/2015; W. P. No.5710/2015; W.P. No.6769/2015; and W.P. No. 7133/2015, the challenge is to a separate order but of the same date that is 31.12.20014 which are called as Group – 2 cases. Most of the facts are common in both set of cases; therefore, they have been taken for decision together.

02. All the writ petitions arise out of the common facts i.e. that a Pre Medical Test examination 2012 was conducted by the Professional Board of Examination (hereinafter referred to as the “Vyapam” for short) for admission to MBBS course on 10.6.2012. The result was declared on

20.6.2012. On account of irregularities in conduct of examinations by the officials of Vyapam; criminal proceedings were initiated, when FIR - crime No. 539 of 2013 was registered in Police Station Rajendra Nagar Indore on 7.7.2013. A special Task Force was constituted (STF). On the basis of investigations conducted, admission of 415 candidates was cancelled. The challenge to such order remained unsuccessful in a bunch of writ petitions since reported as **Pratibha Singh Ku. (Minor) Vs. The State of Madhya Pradesh and others - 2014 (3) MPLJ 178**. It was revealed that unfair means were adopted in the previous years as well. Vyapam cancelled the examination of the candidates who used unfair means in the PMT examination in the years 2008 to 2012. The challenge to such cancellation remained unsuccessful in a bunch of writ petitions vide judgment since reported as **Neetu Singh Markam Vs. State of M.P. and others-2014 (4) MPLJ 203**. The appeal before the Supreme Court stands dismissed by judgment reported as **NidhiKaim and another Vs. State of M.P. and others (2017) 4 SCC 1**.

03. Earlier, the result of 14 candidates of PMT 2012 were cancelled on 24.4.2014, but such order was set aside by this Court in W.P. No.8394/2014 and other cases vide order dated 14.11.2014. In terms of liberty granted, the OMR answer sheets of 14 such candidates and 5 other candidates were examined in respect of the allegations of mismatch of ink and interpolation in the scanning process. In respect of candidates falling in Group – 1, the finding is that the Optical mark recognition (OMR) answer

sheet has been scanned twice, the second time after interpolation of the answer sheets, whereas, the Group 2 cases, the interpolation is alleged even before the first scanning.

04. The process of the examination is multiple choice questions numbering 200 on the basis of options to be given in the OMR answer book. A candidate is required to darken a circle of a correct answer with black ball pen. The process of preparation of the result is that OMR answer sheets is scanned in OMR scanning machine which generates the data file with extension (.DAT). In the next step, such .DAT file is converted into .DBF file for further use in the computer programmes. The process of manipulation in the present cases is at two stages, firstly before scanning the answer books when the officers and officials of the Vyapam facilitated interpolation in the answer sheets so that candidate gets enough marks for admission to a professional institute. Secondly, the interpolations were carried out after first scanning was done and after manipulation, the scanning was done second time.

05. The Vyapam has annulled the examination result of 19 candidates on account of use of unfair means vide two separate orders dated 31.12.2014. The first Group of cases is where the OMR Answer sheets have been scanned twice. For the sake of convenience, the facts are taken from W.P. No.6772/2015 in respect of cases falling in Group 1. As per the impugned order, the petitioner, Disha Sethia – petitioner in W.P.

No.6772/2015 has attempted 80 questions in the initially scanned file generated as .DAT file, but as per .DBF file she has shown to have been attempted 199 questions. On the basis of original answer sheet, the candidate could not be admitted, as even if it is assumed that all the 80 questions to be corrected, she would have obtained 80 marks, whereas minimum qualifying marks were 100. It is only on account of the manipulation in the OMR sheet, the candidate got selected. After the orders of this Court passed on 14.11.2014, a show cause notice dated 17.12.2014 was served upon the candidates including the petitioner. Identical notices were served upon the other petitioners as well. The notice refers to the fact that as per the hard disk recovered from the computer branch of the Vyapam, the petitioner has answered 80 questions in OMR sheet and in the event of answer being correct she would not have got admitted. The OMR answer sheet No.2447719 shows that in addition to 80 answers another 119 answers have been attempted, which were left blank in the original OMR sheet and thus, the admission of the candidate has been secured. It is also communicated that the OMR sheet has two scanned numbers which shows that .DAT file was prepared and manipulation in the OMR sheet was made after the OMR sheet was initially scanned. The inferences were drawn in respect of less percentage of the correct answers in the originally scanned OMR sheet and the percentage of marks obtained in the revised scanned file to infer that there is a manipulation in the OMR sheet. In reply to the show cause notice, the stand of the petitioner – Disha Sethia is that her admission was not earlier cancelled; therefore, the show cause notice could not be

served upon her and is required to be withdrawn. It was pointed out that since there was no negative marking, there was no risk in attempting all the questions. The Committee concluded that OMR sheets were scanned twice and that two .DAT file were prepared. Thus, after scanning OMR sheet, the answers were attempted in the OMR sheets which were again scanned. Such fact is evident from the two files retrieved from the computer. Any change in the original data file comes in the category of manipulation of the answer sheets. In view of this conclusion, the result of all the 7 candidates were set aside in terms of Rule 4.9 of the Brochure published for the admission to PMT 2012 examination.

06. The facts on record shows a report was registered at Police Station – Rajendra Nagar, in the year 2013 in respect of illegalities committed by some officers of the Vyapamand students during the examination of PMT Examination 2012. On the basis of such investigations, a Crime No.12/2013 was registered in relation to PMT 2012. It is also averred that 23 students were under scanner for selection in the PMT Examination 2012, but the candidatures of 14 candidates were cancelled as per the report of State Examiner of questioned documents. It was found by the Vyapamthat OMR answer sheets have been examined twice and there are two types of ink found on the answer sheets. Those 14 candidates challenged the said cancellation order in the writ petition. The writ petition was disposed of with the liberty to Vyapamto investigate the matter afresh after giving opportunity of hearing to the candidates.

07. The relevant extract from the reply of Vyapam as filed in WP 373 of 2015, adopted to be on behalf of the Respondent in the present writ petition as per affidavit dated 30.3.2015 is as under:-

“REPLY TO PARA 5.6

In reply to the contentions raised in this para it is humbly submitted that the petitioner though appeared in the examination and it is admitted fact that as per the mark sheet the petitioner had secured 175 marks out of 200 marks, however, later on, with the unearthing of the PMT Scam various discrepancies have been found and one such foul play is found on part of the petitioner wherein in the investigation/enquiry it was found that the petitioner had used unfair means and the marks secured by her infact were such marks which could (sic. ‘not’) have been secured by her if she had used fair means in the examination. The Committee examined the OMR sheet and thereafter with the aid of various computer programme and the scrutiny of data files it was found that the petitioner had only answered herself such questions out of which 81 marks was secured by her. Further as per DBF file the answers written in the OMR sheet were found to be 198. Meaning thereby in the OMR sheet extra marks obtained by her on the basis of additional marking of answers was 117 and if the marks originally secured by her which was 81 was taken into account then the selection of the petitioner was not possible in the unreserved category because the minimum marks for selection in the unreserved category at that relevant point of time was 100 marks. Therefore, it was quite clear that the petitioner who had secured in total 175 marks by her by using unfair means thereby inflating her marks. These all factors came in the knowledge during the scrutiny/investigation conducted against the petitioner. Thus, the mark sheet though was given to her contained 175 out of 200 marks but these marks were found to have been obtained by her by suing unfair means.

08. In a separate reply filed on behalf of the STF, it was said to the following:-

REPLY TO PARA 5.10 & 5.11

.....The STF also seized the OMR sheet of the petitioner and the other students also and the OMR sheet of the petitioner contained 199 encircles whereas DAT file contain only 80 encircles. Meaning thereby it is a clear case of encircling the answers in the OMR sheet at a later stage so as to secure higher merit position. It will not be out of place to mention here that the earlier set of encircles have higher number of wrong answers as compared to the later stage of encircles where the frequency of right answers are higher and in some cases the later encircles are absolutely right answers. It is also pointed out that the petitioner is an accused and is facing trial and that there were instructions in OMR sheet that the encircles to be put in by using black ball pen, but during the scientific analysis by the Technical expert it was found that the ink of the encircles used in the particular OMR sheet was different and the investigation has revealed the use of two ball pen which *prima facie* led to the offence against the petitioner for use of unfair means.....

09. In the above background, Learned counsel for the petitioners vehemently argued that:-

1. *The conduct of the petitioners does not fall within Rule 4.9 of Chapter IV, as the allegation against the petitioners does not amount to any enumerated instances of misconduct.*
2. *That the reply submitted by the petitioner has not been considered while canceling the admission of the petitioner.*
3. *That they were admitted to the MBBS Course on the basis of the result declared and have qualified the first professional examination, therefore, quashing of result without proof of use of unfair means is unjustified.*
4. *That there is no allegation against the petitioner of using*

two different types of ink during the PMT Examination 2012. Therefore, merely on the basis of alleged data retrieve from the hard disk the result of the petitioner could not have been cancelled.

5. *That the judgment in the case of **NidhiKaim and another Vs. State of M.P. and others** reported as (2017) 4 SCC 1 is not applicable to the petitioner as it was a case of cheating committed by a syndicate who managed seating arrangement within the examination hall itself, whereas, in the present case there is no such charge, therefore, on the basis of judgment in the case of **NidhiKaim** (supra) the impugned order may be set aside and quashed.*

10. We have heard learned counsel for the parties and we find no merit in the present petitions. There is a categorical finding that the petitioner – Disha Sethiya has attempted 80 questions which is apparent from the .DAT file generated after the first scanning. Thereafter, another 119 questions were attempted which is also evident from the second .DAT file generated. It is on the basis of second scanning result has been prepared and the petitioner was admitted to a professional course, which was based upon interpolation in the process of preparation of result and not on their own merit. Once the OMR sheet has been scanned which shows 80 questions were attempted then how another 119 questions came to be attempted after scanning of the original OMR sheet. Such interpolation was made by the petitioner and other candidates with the connivance of the officers and/or officials of the Vyapam so as to make the petitioners eligible for admission. By such process, the petitioners have committed a fraud and such fraud will vitiate admission process as has been held by the Division Bench of this

Court in the case of **Pratibha Singh Ku. (Minor) Vs. The State of Madhya Pradesh and others** reported in **2014 (3) MPLJ 178**. The Court has held as under:-

“40. Indisputably, the obligation to conduct free and fair pre-admission professional examinations is fully vested in the State Government and which has been entrusted to the existing Board. That power not only encompasses authority to conduct the examination but also enquire into all matters concerning therewith or incidental thereto. That authority does not cease with the declaration of results of such examination. Any other view would not only be a pedantic view but also against public policy. For, that may result in perpetrating injustice caused to the better deserving and meritorious candidates, but, also perpetrating fraud played on the public examination process. In Law, any act of fraud vitiates the entire action. The product of fraud must be visited with the finding that it is non-est in the eyes of Law and viewed seriously. That issue can be considered even in collateral proceedings. In the case of *Ram Preeti Yadav* (supra) the Apex Court observed that once fraud is proved it will deprive the persons of all advantages or benefits obtained thereby and further delay in detection or in taking action so as to invoke argument of equity would be completely misplaced. The Court also restated the legal position that in the case of mass copying, principles of natural justice need not be strictly complied with. In that case the appellant had taken employment as a teacher on the basis of results in B.A. examination as well as M.A. examination. Result of the concerned examination was cancelled on 16th October, 1996, though the examination was conducted in the year 1984. Notwithstanding this fact, the Court opined that since the result of the examination was founded on commission of fraud that would deprive the appellant of all advantages or benefits obtained thereby.

41. Suffice it to observe that a candidate who indulges in unfair and fraudulent means during the "public examination" cannot be

allowed to reap benefit of his own wrong merely because of the fortuitous situation of that fraud has been unravelled by the concerned Authority after declaration of result of the examination or for that matter inaction of the officials of the Board in acting with dispatch. Since the authority of the present Board is to conduct examinations and deal with all matters connected therewith and incidental thereto, it pre-supposes that it is only the Board, being an extended wing of the State, competent to enquire into the question regarding unfair and fraudulent means adopted during the examinations conducted by it - be it before declaration of results or, for that matter, after declaration of results. The fact that the candidate has already taken admission in some professional course on the basis of those results cannot be the basis to hold that the Board has become *functus officio* or it has ceased to have authority to pronounce on the matters connected with the examination conducted by it and, in particular, regarding unfair and fraudulent means adopted thereat, by an individual candidate or large number of candidates, as the case may be.”

11. The argument of the learned counsel for the petitioner that the allegations against the petitioners does not fall within the ambit of unfair means is again not tenable. Clause 4.9 contemplates that the enumerated acts of unfair means or any other act of the candidate if treated in the category of unfair means by the Supervisor/Center Superintendent/Invigilator, then he shall be subjected to judicial proceedings. Considering the answer-sheet of the candidate to be under unfair means, valuation of the same shall not be done and his candidature shall be canceled. Besides this, in case of use of any other kind of unfair mean, the candidate shall be handed over to the Police for necessary action and legal proceedings shall be initiated against him. In fact, similar argument raised in **Pratibha Singh**'s case

was not accepted. Considering the similar clause, the Court held as under :-

“64. The next question is: whether impugned decisions fulfill the requirement of Chapter-IV of the Brochure. In the first place, the Brochure is only a handbook issued for guidance and the procedure to be followed. That would not limit the expansive powers of the Board to take action having found that organized mass-copying was indulged during the examination conducted by it. Assuming that the power vested in the Board could be limited to the provisions contained in the Brochure being advance declaration of the procedure to be followed by it, we have no hesitation in taking a view that the impugned decisions are well within the parameters specified in the Brochure. For the sake of convenience, we will reproduce the relevant extract of the Brochure.....

xxx xxx xxx

The opening part of the Brochure gives important instructions. The same, inter alia, stipulates that the candidate must give correct information while submitting the application form but it also goes on to mention that if it is noticed that the applicant got entry (in the examination conducted by the Board) because of any mistake, that can be cancelled. The overarching power of the Board does not get whittled down by this instruction. Clause 4.12 of the Brochure refers to unfair means. The said clauses are only illustrative instances when the act of commission or omission of a candidate will result in indulging in unfair means during the examination. We find force in the argument of the counsel for the Board that clauses (Ka), (Gha), (Da), (Cha) and the later part of the same provisions, are sufficient enough to attract action as taken by the Board, as a result of organized mass- copying by the candidates concerned. We also agree with the submission of the Board that the action in respect of any of the acts referred to in clause 4.12 could be taken by the Board on its own. The requirement of initiating action on the basis of complaint received from Supervisor/

Invigilator is mutually exclusive power vested in the Board. We are also not impressed by the argument of the petitioners that the only option available to the Board was to refer the matter to the police. Suffice it to observe that the conclusion reached by the Board in the impugned orders is ascribable to the acts of commission and omission referred to in clause 4.12 of the Brochure and that provision also speaks about the Authority of the Board to initiate action and including to cancel the examination results if the candidates had indulged in organized mass-copying, and including impersonation.”

12. Similar view was taken in the case of **Neetu Singh Markam Vs. State of M.P. and others** reported as **2014 (4) MPLJ 203** considering identical worded clause in the PMT Test 2010. The relevant extract from the Judgment reads as under:-

“72. We have already held that the candidates had indulged in mass copying in Pre-Medical Tests, 2008 to 2012 therefore, for the reasons assigned by Division Bench in paras 91 to 106 of the decision in the case of **Pratibha Singh**, (supra) the principles of natural justice would have no application in the peculiar fact situation of these cases. In order to examine the contention of the petitioners who had appeared in Pre Medical Test, 2010 that their cases do not fall within the purview of Rule 3.8 of Madhya Pradesh Medical and Dental Under Graduate Entrance Examination Rules, 2010, it is necessary to reproduce the aforesaid rule, which reads as under:-

"Rule 3.8 UNFAIR MEANS (UFM)

If any candidate is found using unfair means during the examination, which includes, referring to a book/note book/loose sheets, talking, giving assistance or seeking/receiving help from any source, indulging in any malpractice or misbehavior in any manner in the test hall, harassing or doing harm to other candidates or invigilation or supervisory staff or if any action of the candidate is

interpreted by the Observer/Centre Superintendent/Invigilator as amounting to adopting unfair means, a case will be registered under unfair means and shall be legally dealt with accordingly. The answer sheet of the candidate booked under UFM shall not be valued and his/ her candidature shall be cancelled. Additionally, any case of use of unfair means on the part of the candidate may be handed over to the police. Criminal proceedings shall be initiated against such candidates."

Thus, it is evident that definition of 'unfair means' is inclusive and provides that additionally in any case of use of unfair means, enumerated in the rule which would include the case of 'mass copying' as well, under the aforesaid rule and action can be taken against the petitioners. Besides that, in any case, if the Board has power to conduct the examination, it has implicit power to cancel the results of the candidates as well. It has been held by the Division Bench in the case of Pratibha Singh (supra) that Board alone has the authority to take action against the candidates for cancellation of results. Therefore, the aforesaid contention cannot be accepted."

13. In respect of an argument that as there was no negative marking, the petitioner has attempted all the questions is again not tenable. Though there was no negative marking, but wrong answer will not give her admission was enough for the petitioner to leave some of the questions blank to fill up later on with the correct answers with the help of officers/officials of Vyapam. Some of the answers in the OMR sheet were left blank, which could be filled up later by the candidate to ensure, that such candidates can be assigned marks for admission. Therefore, the said argument does not stand to reason.

14. Since the petitioners are beneficiary of getting admission on the basis of manipulated answer sheets which finding has been recorded by the Committee after giving show cause notice to the petitioners, therefore, we do not find that such candidate, who has got admission by depriving a meritorious candidate right of admission and secured admission by manipulation, is entitled to any indulgence in equitable writ jurisdiction of this Court.

15. We do not find any merit in the argument that the reply of the petitioner has not been considered while passing an order of the cancellation of result of the petitioners. Reply of the petitioner is vague inasmuch as, she does not deny the use of two pens. The finding of Vyapam is that two pens were used. The second pen was used to make interpolations in the answer sheet so as to secure admission. Therefore, since the admission has been cancelled on account of interpolation in the answer sheet, we do not find any substance in the argument raised by learned counsel for the petitioner. In respect of the argument that it would be inequitable to cancel the admission of the petitioner, at this stage as the petitioner was admitted to a professional college on her merit. Suffice it to say that similar argument raised by the petitioner in **NidhiKaim's** case (supra) has not been accepted. The petitioners are beneficiary of the fraud committed in the process of examination. The beneficiary of fraud cannot be allowed to continue with its benefit as has been held by the Supreme

Court in the case of **NidhiKaim's case** (supra).

16. Though the judgment in **NidhiKaim's case** (supra) was in respect of different examinations but the fraud had been detected at least from the year 2008 to 2012. The Judgment deals with the consequence of fraud being committed in the examination process. The relevant extract from the judgment reads as under:-

81. During the course of hearing, it could not be seriously disputed at the hands of the learned counsel for the appellants that the appellants' admission to the MBBS course was based on established deception and manipulation. All the same, we will expressly deal with the instant aspect of the matter and the extent of the appellants' involvement in the following paragraph. It was also not disputed at the hands of the learned counsel that the cause and effect of fraud was determined by the Court of Appeal in *Lazarus Estates Ltd. v. Beasley* [*Lazarus Estates Ltd. v. Beasley*, (1956) 1 All ER 341 : (1956) 1 QB 702 : (1956) 2 WLR 502 (CA)] . The consequences of fraud, as determined by the Court of Appeal (in the above judgment), have been repeatedly approved by this Court. In the above judgment Denning, L.J. had observed as under: (QB pp. 712-13)

“We are in this case concerned only with this point: can the declaration be challenged on the ground that it was false and fraudulent? It can clearly be challenged in the criminal courts. The landlord can be taken before the Magistrate and fined £30 (see Schedule 2, para 6) or he can be prosecuted on indictment, and (if he is an individual) sent to prison (see Section 5 of the Perjury Act, 1911). The landlords argued before us that the declaration could not be challenged in the civil courts at all, even though it was false and fraudulent, and that the landlords can recover and keep the increased rent even though it was obtained by fraud. If this argument is correct, the landlords would profit greatly from their fraud. The increase in rent

would pay the fine many times over. I cannot accede to this argument for a moment. *No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever; see, as to deeds, Collins v. Blantern [Collins v. Blantern, (1767) 2 Wils KB 341 : 95 ER 847] , as to judgments, Duchess of Kingston case, In re [Duchess of Kingston case, In re, (1776) 1 Leach 146 : 168 ER 175] and, as to contracts, Master v. Miller [Master v. Miller, (1791) 4 Term Rep 320 : 100 ER 1042] . So here I am of opinion that, if this declaration is proved to have been false and fraudulent, it is a nullity and void and the landlords cannot recover any increase of rent by virtue of it.”*

(emphasis supplied)

We need to say no more in the manner how fraud has to be dealt with whenever it is established. However, stated simply, nothing ... nothing ... and nothing, obtained by fraud, can be sustained, as fraud unravels everything. The question which arises for consideration is, whether the consequence of established fraud, as repeatedly declared by this Court, can be ignored, to do complete justice in a matter, in exercise of jurisdiction vested in this Court under Article 142 of the Constitution? And also, whether the consequences of fraud can be overlooked in the facts and circumstances of this case in order to render complete justice to the appellants?

82. The learned counsel for the appellants attempted to persuade us very strongly to overcome the law declared by this Court on the issue of established fraud. Is it possible to accept such a contention? If the appellants' involvement is not serious, it may well be possible to accept the contention. Therefore, before we

deal with the submissions canvassed, it is important to understand the extent and proportion of the shenanigans of the appellants. It is not in dispute that none of the appellants would have been admitted to the MBBS course, as their merit position in the Pre-Medical Test was not as a result of their own efforts but was based on extraneous assistance. The appellants were helped in answering the questions in the Pre-Medical Test by meritorious candidates. The manipulation by which the appellants obtained admission involved not only a breach in the computer system whereby roll numbers were allotted to the appellants to effectuate their plans. It also involved the procurement of meritorious candidates/persons, who would assist them in answering the questions (in the Pre-Medical Test). The appellants' position, next to the helper concerned, at the examination, was also based on further computer interpolations. Not only were the seating plans distorted for achieving the purpose, even the institutions where the appellants were to take the Pre-Medical Test were arranged in a manner as would suit the appellants, again by a similar process of computer falsification. This could only be effectuated by a corrupted administrative machinery. Whether the nefarious and crooked administrative involvement was an inside activity, or an outside pursuit, is inconsequential. All in all, the entire scheme of events can well be described as a scam ... a racket of sorts. The appellants or their parents would obviously have had to pay large amounts of money to the Vyapam authorities. The appellants' admission to the MBBS course was therefore clearly based on a well-orchestrated plan which we can safely conclude as based on established fraud.

84. The controversy in the present case does not relate to a singular academic session. Whether or not this vitiated process of obtaining admission to the MBBS course was adopted during the year 2007, and prior thereto, is not known. Because, MBBS admissions prior to 2008 were not investigated. Investigation was initiated in the first instance with reference to admissions for the year 2013. Thereafter, investigation was extended to those who had gained admission to the MBBS course during the years 2008 to 2012. Investigation revealed a well-thought out, unethical plan,

involving administrative support, during six consecutive academic sessions ... from 2008 to 2013. Vyapam was certain about the system having been manipulated at the hands of at least 634 candidates (during the years 2008 to 2012 itself). There may well have been others but no action was taken against them as their cases fell beyond the realm of suspicion (on the parameters approved and adopted by Vyapam).

85. This Court, while dealing with admissions during the years 2008 to 2012, followed the earlier judgment [*NidhiKaim v. State of M.P.*, (2016) 7 SCC 615 : 7 SCEC 611] wherein admissions to the MBBS course during the year 2013 were annulled. The High Court in all the matters consistently upheld the cancellation orders passed by Vyapam. This Court also reiterated the validity of the orders passed by the High Court, and thereby, upheld the Vyapam orders. In the above view of the matter, the factual and the legal position with reference to the admission of the appellants to the MBBS course being vitiated has attained finality. The fact that the appellants had gained admission to the MBBS course by established fraud does not (as it indeed, cannot) require any further consideration.

86. In view of the sequence of facts narrated above, it is not possible for us to accept that the deception and deceit adopted by the appellants was a simple affair which can be overlooked. In fact, admission of the appellants to the MBBS course was the outcome of a well-orchestrated strategy of deceit and deception. And therefore, it is not possible to accept that the involvement of the appellants was not serious. In fact, it was indeed the most grave and extreme, as discussed above.

87. In the above view of the matter, it is not possible for us to overlook the consequences of the declared legal position with reference to the consequence of fraud on the ground that the involvement of the appellants in the acts of fraud was not serious.”

17. In view of the above, we do not find that the decision of the Vyapam to cancel the result of the petitioners falling in Group 1 warrants any interference in exercise of power of judicial review as the fraud is of facilitation of OMR answer sheets after filling up of blank options to ensure admission to the professional courses.

Group 2 Cases

18. The challenge in this group of writ petitions are again to an order dated 31.12.2014 passed in respect of 9 candidates. The order has been passed on the basis of the manipulation in OMR answer sheets. Out of 9 candidates, it is alleged that 5 candidates have used white fluid for correction of earlier answers and also filled up blank answers with the different ink so as to make them eligible for admission. Out of 5 candidates, who alleged to have used white fluid, Gunita Bansal (WP No.2143 of 2015), Versha Verma (WP No.5710 of 2015) and Roshni Patel (WP No. 7133 of 2015) are the writ petitioners in the present set of cases. The facts of these cases are taken from W.P. No.2053/2015 – Ravina Ansari which was argued by Shri Anil Khare, Senior Advocate.

19. The allegations against the petitioner is that one Tarang Sharma who is an accused had setting with the officials and officers of the Vyapam, where the unfilled answers in the OMR sheets were interpolated in the data and by filling the answers in the unanswered option, the candidates were made to be meritorious. Thus, the allegation against the petitioner is of interpolation in the OMR answer sheets with the connivance of the officials

and officers of the Vyapam to secure admission. As per the interpolated answer sheet the petitioner has attempted all the 200 questions.

20. The first argument of some of the Learned Counsel for the petitioners is that the Central Bureau of Investigation is a necessary party, and in some of the cases it is not impleaded as party respondent. Therefore, the cases be adjourned to enable the petitioners to implead C.B.I. as one of the necessary party in the cases in which the C.B.I. has not been impleaded as party.

21. We do not find any merit in the said argument, as the action of cancellation of the result on account of use of unfair means is a civil action, whereas conspiracy in manipulating the result is a proceeding now being investigated by the C.B.I. is a criminal action. The Civil and criminal proceedings are mutually exclusive and civil action on the same set of facts in respect of which criminal case has been registered is not an impediment. It was so held by the Division Bench of this Court in **Pratibha Singh Ku. (Minor)'s case** (supra). It was observed as under:-

“85. It was argued that the fact that name of some of the candidates has been found in the material recovered by the police during the investigation cannot be the basis to take such a drastic action against the candidate until the charge is proved against him by the criminal court. In the first place, more or less similar argument advanced by the petitioners has already been considered and rejected on the finding that the standard of proof in the two proceedings is qualitatively different. Moreover, the civil action on the basis of same set of facts in respect of which criminal case

has been registered and pending against the petitioners can be no impediment. Both proceedings are required to be taken to its logical end in accordance with law and are mutually exclusive. For the same reason, we reject the other argument of the petitioners that before taking final decision the Board ought to have factually ascertained the relevant facts by adopting inquisitorial inquiry as to who had indulged in the change of roll numbers to benefit selective candidates and whether the concerned candidate himself was responsible for that situation.”

Therefore, the C.B.I. is investigating the criminality part of the transactions which is distinct than cancellation of result on the basis of material collected by the Committee. Still further, the cases were being adjourned time and again for some reasons or the other, therefore, request at this stage to implead C.B.I. which has nothing to do with the impugned order passed by the Vyapamis only a delaying tactic to delay the decision so as to allow the candidates to continue with the course on the strength of interim orders granted earlier by the Court. Therefore, such a plea does not merit consideration.

22. The Vyapam has passed an order on 31.12.2014 after giving an opportunity of hearing to the petitioner vide communication dated 18.12.2014 (Annexure P-9), *inter alia*, on the ground that in the OMR answer sheet Serial No.2457874, different inks have been used to answer the questions and that this interpolation in the answer sheets has been done at the time of scanning of the answer sheet. Thus, it was proposed that why an action for use of unfair means be not taken against her in terms of Clause 4.9 of the brochure. The stand of the petitioner in the reply is that it is not

possible for her to remember that as to whether she has used different ballpoint pen, but she might have used different ballpoint pen in view of the fact that one ballpoint pen may not be working properly. It is pointed out that OMR answer sheets were deposited with the Superintendent of the examination center; therefore, the responsibility of proper and secured custody was that of the officials of Vyapam, therefore, she cannot be vested with the consequences.

23. The argument of Shri Khare is that in the first set of cases OMR answer sheets were scanned twice which is evident from separate order passed in respect of 7 candidates, but in respect of present petitioners, the OMR sheet have not been scanned twice. The action has been taken against the petitioners only on the basis of alleged use of another ballpoint pen, which is not sufficient cause to return positive finding that the petitioner has indulged in unfair means. It is also argued that the Supreme Court in the case of **NidhiKaim and another Vs. State of M.P. and others** reported as **(2017) 4 SCC 1** has affirmed the judgment of this Court in the case of **Neetu Singh Markam Vs. State of M.P. and others** reported as **2014 (4) MPLJ 203** but the said cases pertain to the admission process from the year 2008 to 2012 and when there were allegations of manipulation in the seating arrangements etc. Since there is no such allegation in the present case, therefore, mere fact that petitioners have found to have used the different ballpoint pen is not a sufficient ground for cancellation of admission.

24. We have heard learned counsel for the parties present and find no merit in the arguments raised. In respect of petitioner in W.P. No.2053/2015 – RavinaAsrani, the finding is that the petitioner answered 72 questions by use of one pen. Out of such 72 answers 51 were found to be correct. But in respect of 128 questions answered with the different ink, as many as 124 questions are correct. It was thus inferred that use of second pen was manipulation in the OMR answer sheet to ensure that she gets more than 100 marks for being a meritorious candidate, entitled to be admitted. It is also pointed out that only 70.83 percent marks were correct as per the answers originally attempted, as against 96.87 percent marks attempted with the second pen. Though, in the case of the petitioner, there is no scanning of the OMR answer sheets twice, but that will not absolve the petitioner of manipulation in the answer sheets. It is a case of more organized interpolation as even before scanning of OMR answer sheets, there was interpolation in the OMR answer sheets so as to ensure that she obtains sufficiently high marks for admission to a professional college. Her response to the show cause notice is that there was no bar of using two different pens and that she does not remember the use of second ballpoint pen is not sufficient to discard the conclusion arrived by the expert Committee to held that there was interpolation in the answer sheets. If around 70 % was the correct answers attempted with one pen then it is not possible to accept that the second pen was so lucky for her so as to have almost 97% of her answers correct. The high percentage of correct answers with the second pen is indicative of use of unfair means so as to be the

meritorious candidate.

25. The use of white fluid by the petitioners in some of the petitions as mentioned above, support the finding of interpolation in the OMR answer sheets. Clause 4.9 of Chapter IV of the brochure of the PMT Pre-Medical Test, 2012 permits only a black ballpoint pen and an admit card to be carried in the examination hall by a candidate. All other material such as – mobile phone, calculator, log-table, rough paper etc. are not permitted to be taken in the examination hall. If other than black ballpoint pen, no other article is permissible then how a OMR answer sheets can have white fluid. It only supports the finding that there is interpolation at the time of scanning of the answer sheets to facilitate admission of the candidates.

26. In view of the aforesaid and also the reasons recorded in the order passed in Group 1 of the writ petitions bearing W.P. No.6768/2015 and other connected cases, we do not find that the decision of the Vyapam to cancel the result of the petitioners falling in Group 2 warrants any interference in exercise of power of judicial review. Thus, the petitioners in these writ petitions are not entitled to get any relief from this Court. Accordingly, the aforementioned writ petitions are **dismissed**.

(Hemant Gupta)
Chief Justice

(Sanjay Yadav)
Judge