

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of decision: 6<sup>th</sup> July, 2010.**

+ **W.P.(C) No.4401/2010**

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**PARAG TYAGI AND ANR**

..... Petitioners

Through: Mr. Sudhir Nandrajog, Sr. Advocate  
with Ms. Vatsala Kak & Mr. Sumesh  
Dhawan, Advocates

Versus

**UOI AND ORS**

..... Respondents

Through: Mr. A.S. Chandhiok, ASG with Mr.  
Jatan Singh & Mr. Partap Singh Parmar,  
Advocates for R-1/UOI.  
Mr. Mohinder J.S. Rupal & Ms. Preeti  
Maniktalya, Advocates for R-1,3 & 4.

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. Whether reporters of Local papers may  
be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported  
in the Digest? Yes

**RAJIV SAHAI ENDLAW, J.**

1. The petitioners, being applicants for admission to the Medical  
Colleges of Delhi for the academic session 2010-11 and for which an  
examination (DUMET) was conducted by the respondent no.4 University of

Delhi, by this writ petition seek setting aside of the said examination and a direction for the entrance examination to be re-conducted. It is the case of the petitioners that as per the instructions of the respondent no.4 University of Delhi, the Optical Mark Reader (OMR) answer sheets were required to be coloured by HB Pencil only instead of in ink. It is the further case of the petitioners that several other Universities/Colleges also using the OMR answer sheets, require colouring thereof in ink and which eliminates the possibility of tampering. It is the case of the petitioners that the result of DUMET has been tampered with, to admit the students who otherwise had no merit. The only fact / plea in support thereof is that several of the students who have made it to the merit list in the said examination (DUMET-2010) have scored very low marks in the Common Entrance Test (CET) of I.P. University. It is contended that the said disparity in marks obtained in two entrance exams held in close proximity both for entrance to Medical Colleges, is indicative of the results of DUMET – 2010 being fudged.

2. The only reason given by the petitioners to aver tampering / fudging with the results of DUMET – 2010 does not inspire confidence. There can be several factors for a student to score differently in different entrance examinations. Merely because a student is shown to have scored very low marks in one examination is no reason to hold that the result of the other examination in which he is shown to have scored high marks, to be bad and

for setting aside of the said result. It is quite improbable that a large number of answer sheets bearing only the roll number would be segregated and / or tampered with to benefit few students. Some sanctity has to be attached to the result of the examination conducted by the University. The senior counsel for the petitioner also admits that there can be no fool proof admission procedure eliminating all possibilities of tampering in the results.

3. In *Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupesh Kumar Sheth* AIR 1984 SC 1543 the proposition that every student has a right to receive fair play in examination and get appropriate marks matching performance and that it will be denial of right of fair play if there is to be a prohibition on the right to demand re-evaluation was not accepted by the Supreme Court. It was held that what constitutes fair play depends upon the facts and circumstances of each case – if it is found that every possible precaution has been taken and all necessary safeguards provided to eliminate tampering and that evaluation is done applying uniform standards with checks and cross checks at different stages and that measures for detection of malpractice etc. have also been effectively adopted, then it will not be correct on the part of the courts to interfere. Relying on the Constitution Bench in *Fatehchand Himmatlal Vs. State of Maharashtra* MANU/SC/0041/1977 it was further held that if such interference is permitted, there will be no certainty at all regarding the results of competitive examination for an indefinite period of time. Similarly

in *Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission* (2004) 6 SCC 714, the Supreme Court upheld the order of the Division Bench of the High Court allowing appeal against the order of the Single Judge who had directed re-evaluation of the answer sheets by teachers appointed by the Single Judge.

4. In so far as the contention of the petitioners of expectancy of higher marks than attributed to them in the result declared, *UOI Vs. Mohan Lal Capoor* AIR 1974 SC 87 laying down “it is not expedient to extend the horizon of natural justice in the *audi alteram partem* rule to the twilight zone of mere expectations, however great they might be” can be cited with advantage.

5. The petitioners took the examination on the terms prescribed and without lodging any protest of the rule regarding use of HB pencil only. The petitioners then did not contend that they should be allowed to use ink, to eliminate tampering. The petitioners, after being not successful cannot be permitted to challenge the rule/procedure of conduct of examination.

6. In the aforesaid circumstances, no ground is found to set aside the examination or to direct the same to be held again.

7. The petitioners have also sought the relief of directing the respondents to conduct an inquiry. It has been enquired from the senior counsel for the petitioners as to what can be undertaken in the inquiry. Even if all or some of the answer sheets are found with symptoms of eraser, it would be very

difficult/nigh impossible to determine as to whether the same was done by the students while changing the answers or has happened subsequently in an attempt to tamper with the answer sheets. The petitioners also have been unable to throw any light on this aspect. In the circumstances, no case for directing an inquiry also is made out.

8. The senior counsel for the petitioner has lastly contended that at least for future, directions should be given to the respondents to prescribe colouring of the OMR answer sheets in ink rather than HB pencil. From a reading of the instruction sheets of the respondents, it appears that the colouring in HB pencil rather than ink has been prescribed to allow a candidate, while filling up the answer sheet to erase the mistakes, if any, and which may not be possible if the answer sheet is filled up in ink. It thus cannot be said that the respondents had prescribed for colouring by use of HB pencil only with any *mala fide* intention or in an attempt to allow tampering with the answer sheets and the result of the examination; rather it appears to be in the interest of students. Be that as it may, since the petitioners have raised the issue, it will be open to the respondents, entrusted with conducting of the examination for entrance to the Medical Colleges in the city of Delhi, to consider the said aspect and to take a decision thereon not only treating the present petition as the representation but also taking into consideration the views of the other prospective students, admission seekers, experts and all other concerned. The said decision be taken within

six months of today and be communicated either by public notice to all concerned or at least to the petitioners.

9. No case for entertaining the petition is made out. The same is dismissed. No order as to costs.

**CM No.8730/2010 (u/S 151 CPC for exemption)**

Allowed, subject to just exceptions.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**6<sup>th</sup> July, 2010**  
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