

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**C. P. No. D-6695 of 2019**

**Present:**

Ahmed Ali M. Shaikh, CJ  
and Yousuf Ali Sayeed, J

Petitioner : Arif Hussain through Talha Abbasi, Advocate.

Respondent No.1 : University of Karachi through Ameeruddin, Advocate.

Respondent No.2 : Higher Education Commission through Khaleeque Ahmed, DAG.

Respondents No.3 : Federal Urdu University of Arts, Science & Technology through K. A. Wahab, Advocate.

Respondent No.4. : Tahir Mehmood, through Atir Aqeel Ansari, Advocate.

Date of hearing : 17.08.2022.

**ORDER**

**YOUSUF ALI SAYEED, J.** - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning Declaration No. CE/Exams/2017/102 dated 03.07.2019 made by the Respondent No.1 University (the “**Declaration**”), as well as the consequent Notification dated 18.09.2019 issued by the Respondent No.2 (the “**Notification**”), cancelling his Bachelor of Arts (BA) (Pass) result and withdrawing attestation of his Degree on the ground that he had been found guilty of tampering with his Intermediate Mark Sheet.

2. The aforementioned Declaration and Notification (collectively, the “**Impugned Memoranda**”) *inter alia* read as follows:

**UNIVERSITY OF KARACHI**  
**Examination Department**

No. C.E/Exam./2017/103

Dated:-03/7/19

**DECLARATION.**

As per findings of Deputy Registrar Settlement, University of Karachi Mr. Arif Hussain S/O Muhammad Rashid has been found guilty of tampering in his Intermediate mark sheet. The entire result of B.A (Pass) Annual Examination 1998 of Mr. Arif Hussain S/O Muhammad Rashid seat No. 24601/1998, Enrolment No. F-40018 is hereby cancelled.

This is issued for the public information with the approval of competent authority.

**Controller Examinations**  
University of Karachi

Copy forwarded for information to the:-

1. The Chief Secretary, Government of Sindh
  2. P.S to Vice Chancellor, University of Karachi
  3. Secretary, Higher Education Commission, Islamabad.
  4. Registrar, University of Karachi.
  5. Incharge, Semester Cell; University of Karachi.
  6. Deputy Controller Examination (Conf.), University of Karachi
  7. Deputy Registrar Settlement, University of Karachi
  8. Public Information Officer, University of Karachi
  9. Secretary Federal Public Service Commission, Islamabad
  10. Secretary, Sindh Public Service Commission, Sindh
  11. Secretary Education and Literacy Department, Govt. of Sindh
  12. Registrar / Controller of Examination N.E.D University Karachi.
  13. Registrar / Controller of Examination, All Public Universities
  14. Registrar / Controller of Examination, All Private Universities.”
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**“HIGHER EDUCATION COMMISSION**  
Sector H-9, Islamabad (PAKISTAN)  
Telephone: 0092 51 90400904, Fax: 0092 51 90400902  
URL: <http://www.hec.gov.pk>

Ref:5-3/A&A (Att. Cell)/HEC/2019/3091  
September 18, 2019

Subject: **Notification**

The University of Karachi, Karachi vide Declaration No.C.E/Exam./2017/102 dated July 03, 2019 has cancelled the entire BA (Pass) result of Mr. Arif Hussain S/o Muhammad Rashid Seat No 24601/1998 and enrolment No F-40018 as he has been found guilty of tempering in his Intermediate Marks Sheet. Therefore, the attestation made by the Higher Education Commission on Bachelor of Arts (Pass) degree held by Mr. Arif Hussain is hereby withdrawn with immediate effect.

**Hidayat Ullah Khan**  
Director (A&A)

**Distribution:**

- i- **PS to Vice Chancellor,**  
University of Karachi,  
Karachi.
- ii- **The Registrar,**  
University of Karachi, Karachi.
- iii- **The Controller of Examination,** University of Karachi,  
Karachi with reference to their declaration No  
C.E/Exam./2017/102 dated July 03, 2019
- iv- **The Director,** HEC Regional Centre, Lahore with reference  
to their letter No. 39(2)/HEC/2018/RCL/10763 dated  
September 28, 2018.”

3. Learned counsel for the Petitioner submitted that the Petitioner had duly qualified his FA and BA exams and has no reason to procure any document by using unfair means. He contended that the Impugned Memoranda had ensued without due process, as the Petitioner had not been issued a notice to show cause or afforded an opportunity of hearing prior to such findings and action being recorded/taken against him. It was submitted that

the Petitioner only came to know of the Declaration and consequences that flowed therefrom when he received a copy of a letter dated 11.10.2019 addressed by the Respondent No.2 to the Secretary of the Punjab Bar Council, and upon further enquiry came to know that such chain of events had been set in motion through the complaint of the Respondent No.4, with whom the Petitioner was embroiled in a property dispute. It was argued that the issuance of the Impugned Memoranda was unjust and illegal, offending Articles 4 and 10-A of the Constitution, hence the same were not sustainable in law. He prayed that the Impugned Memoranda thus be declared a nullity and set aside, whereafter the process may be conducted afresh with a proper opportunity of hearing being afforded.

4. In opposition, it was contended on behalf of the Respondents that the Declaration had been validly made for proper cause, and was not open to interference through the present proceeding. When called upon to demonstrate that a notice had earlier been issued to the Petitioner so as to afford an opportunity of hearing, learned counsel for the Respondent No.1 invited attention to letters dated 12.07.2017 and 23.10.2018 addressed to the Petitioner by the Deputy Registrar, Settlement Office. As their wording and circulation is identical, it would suffice to reproduce the first of those letters, which reads as follows:

**“ENROLMENT SECTION  
UNIVERSITY OF KARACHI**

**Ref.No.Enrol/July-2017**

**Dated: 12-07-2017**

Mr. Arif Hussain S/o Muhammad Rashid,  
House-No.154 Street No.12 Bilal Colony Karachi,  
Karachi.

**Subject: Forged Intermediate Marksheet**

Mr. Arif Hussain S/o Muhammad Rashid student of class B.A from Federal Govt. Urdu College Karachi. In this regards this is to inform you that yours Admission/Enrollment has been cancelled by the undersigned due to submission of forged Intermediate Marksheet (copy enclosed).

In the light of the above you are required to submit the Original Degree/Marksheet and Enrolment Card in the office of the Deputy Controller (Confidential) 2<sup>nd</sup> floor Examinations Department University of Karachi within 15 days after receipt of this letter otherwise, University has right to take legal action against you without issuing the further notice.

Deputy Registrar  
Settlement Office

**Copy to:**

01. Secretary to Vice-Chancellor.
02. P.A. to Registrar.
03. Controller of Examination.
04. Deputy Controller of Examinations (Confidential).
05. Federal Govt. Urdu Arts College Karachi.
06. Abid Wahab Deputy Director(A&A) H.E.C Sector H-9 Islamabad.”

5. We have considered the matter in light of the arguments advanced at the bar with reference to the supporting material and correspondence to which our attention was drawn.
6. Whilst the scope of these proceedings in the Constitutional domain may not extend to ascertaining whether the Petitioner’s academic qualifications were rightly or wrongly obtained so as to make a determination of his status, the aspect of procedural fairness can certainly be looked into so as to ascertain whether the issuance of the Impugned Memoranda satisfies the immutable and overarching principles of natural justice.

7. In the majority opinion in the case of Justice Qazi Faez Isa and others v. President of Pakistan and others PLD 2022 Supreme Court 119, the essence of those principles was restated and emphasised as follows:

“22. The right of hearing is one of the basic principles of natural justice, expressed in the maxim *audi alteram partem*, i.e., no one is to be condemned unheard (right to be heard). The principles of natural justice aim to secure justice or to prevent miscarriage of justice. Lord Denning, speaking for the Privy Council in Kanada v. Government of Malaya, described the two necessary characteristics of the right of hearing thus: "If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence is given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them...It follows, of course, that the Judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other." Lord Morris reiterated and re-emphasized these essential requirements of the right of hearing in Ridge v. Baldwin. His lordship said: "It is well-established that the essential requirements of natural justice at least include that before someone is condemned he is to have an opportunity of defending himself and in order that he may do so that he is to be made aware of the charges or allegations or suggestions which he has to meet... here is something which is basic to our system: the importance of upholding it far transcend the significance of any particular case."

23. Justice Muhammad Afzal Zullah, speaking for this Court in Pakistan v. Public at large referred to various injunctions of Islam and instances contained in the Holy Quran and Sunnah of the Holy Prophet (PBUH) and observed: "Right to property and honour, in addition to life, were also declared sacred which means: not only that their violation is to be punished and/or compensated but also that it is to be prevented... All this cannot be possible without a notice and opportunity of hearing. The denial of these safeguards for doing justice would amount to Zulm [injustice] and Ziaditi [wrong doing] against oneself as also the victim... Command [of hearing the arguments of both parties] is specific to the effect that when a public authority is to be exercised for resolving a controversy regarding rights and liabilities, the decision would

not be rendered without proceedings in which the person affected is also afforded an opportunity of hearing...It is common principle which governs the administration of justice in Islam that in case of liability with penal or quasi-penal consequences and/or deprivation of basic rights a notice as well as an opportunity of hearing, are of absolute necessity. This by itself has to be recognized as a basic right."

24. Justice Sarkaria of the Indian Supreme Court also described these two facets of the rule as to right of hearing as "universally respected" in Swadeshi Cotton Mills v. Union of India. He observed that the "*maxim audi alteram partem* has many facets. Two of them are: (a) notice of the case to be met; and (b) opportunity to explain. This rule is universally respected and duty to afford a fair hearing in Lord Loreburn's oft-quoted language, is 'a duty lying upon everyone who decides something', in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, 'convenience and justice' -as Lord Atkin felicitously put it- 'are often not on speaking terms'."

25. Thus, the general consensus of judicial opinions, as noted by this Court in University of Dacca v. Zakir Ahmed, seems to be that to ensure the principle of fairness embedded in the right of hearing, the person sought to be affected must at least: (i) be made aware of the allegations made against him, upon which basis the decision is to follow, (i.e., notice of the case to be met) and (ii) be given a fair opportunity to make any relevant statement putting forward his own case, and to correct or controvert any relevant statement brought forward to his prejudice (i.e., opportunity to explain). In other words, in order to act justly and to reach at just ends by just means, a deciding authority is to comply with and implement, in all circumstances, these elementary and essential requirements of principle of fairness and right of hearing. As Lawton, L.J. said in Maxwell v. Department of Trade that "doing what is right may still result in unfairness if it is done in the wrong way".

8. That the principle is equally applicable to a regulatory/disciplinary proceeding undertaken by the Respondent No.1 stands well established, and in that regard one need look no further than the case reported as Abdus Saboor Khan v. (1) Karachi University and (2) Controller of Examinations, Karachi University PLD 1966 SC 536.

9. When the matter at hand is viewed accordingly and examined on the touchstone of natural justice, what falls to be considered is whether the letters dated 12.07.2017 and 23.10.2018 relied upon by the Respondent No.1 *prima facie* suffice for purpose of discharging its obligations in that respect.
  
10. What is manifest is that those letters purport to have been sent to an address in Karachi, whereas the address of the Petitioner, as reflected in the title of the Petition, is House No. 49, Post Office and Village Bohpalwala, Tehsil Sambrial, District Sialkot. Indeed, that is the very address on which the letter dated 11.10.2019 addressed by the Respondent No.2 to the Secretary of the Punjab Bar Council was copied to him, through which he claims to have had knowledge of the affair for the first time. That address does not find mention in the Impugned Memoranda or any correspondence forming part of the verification process said to have been carried out by and between the official Respondents.
  
11. As it transpires, other than the letters dated 12.07.2017 and 23.10.2018, all the further correspondence appears to have ensued to the exclusion of the Petitioner. Additionally, it merits consideration that the letters dated 12.07.2017 and 23.10.2018 were issued almost a decade after the Petitioner had completed his degree program, hence, even if it is accepted that the address shown therein is one that the Petitioner had given at the relevant time, it is hardly inconceivable that the same had ceased to be current. Even otherwise, the record is silent as to how, if at all, those letters were dispatched and whether the same were even received, and if so, by whom, or whether they were returned. The Counter-Affidavit to the Petition submitted on behalf of the Respondent No.1 also makes no mention of this aspect.



12. Furthermore, it evident from the very language and tenor of the letters dated 12.07.2017 and 23.10.2018 that the Petitioner had already been found culpable and the punitive measure of cancellation had been taken in the matter.
  
13. As such, we are not satisfied that the requirements of natural justice have satisfactorily been met in the present case. On the contrary, the attendant circumstances lend credence to the Petitioner's contention that the entire process underpinning the Declaration ensued without his knowledge and that he only came to know thereof when copied on the Respondent No.2's letter dated 11.10.2019 addressed to the Secretary of the Punjab Bar Council.
  
14. That being so, the Petition is allowed, with the Impugned Memoranda held to be bad in law and set aside. However, needless to say, it remains open to the concerned official Respondents to revisit the matter, as suggested, and conduct the requisite verification exercise *de novo* so as to decide the status of the Petitioner within a period of forty-five (45) days from the date of this order after due notice and a proper opportunity of hearing.

JUDGE

CHIEF JUSTICE

Karachi.  
Dated: