

(1983) 08 CAL CK 0014
In the Calcutta High Court
Case No : Civil Rule No. 13739 (W) of 1982

Amalendu Santra

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision : 11-08-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1984 Cal 330

Hon'ble Judges : Chittatosh Mookerjee, J

Bench : Single Bench

Advocate : Nigam Chakrabarty and Sunil Kumar Pan, for the Appellant; Sadhan Gupta, Sudhendra Mukherjee and Himadri Barua for Respondents Nos. 1 to 3, for the Respondent

Judgement

Chittatosh Mookerjee, J.—The petitioner who is a Bachelor of Medicine and Surgery, was a candidate for admission to Master of Surgery (General) Course. 1982 of the Calcutta University. But he was not successful in the written test conducted by the Council of Post-Graduate Studies in Medicine. Calcutta University. The petitioner has. inter alia, prayed for commanding the respondent to cancel all the proceedings relating to the said test held for selection of candidates for admission to the M. S. (General Surgery) of Calcutta University. 1982. to forbear from giving effect to the said test and for conducting scrutiny and review of the petitioner's answer script. The petitioner has also prayed for directing the respondents to admit him to the said Post-Graduate course after proper evaluation of his merit by granting him full marks for correctly answered questions irrespective of model answers and irrespective of the impugned results of the test.

2. While issuing this Rule on 20th Dec. 1982. his Lordship the Hon'ble Mr. Justice Tarun Kumar Bose (as he then was), made an interim order directing the respondents 1 to 4 to admit the petitioner in the M. Section (General Surgery) Course commencing in the session 1982 until further orders of the Court. The

learned Judge made it clear that the said admission would be strictly on an ad hoc basis and subject to further orders. On the application for interim orders, the University of Calcutta had subsequently made an application for vacating the said interim orders but the said prayer was not granted and this Rule was directed to be expeditiously heard.

3. The Secretary of the Institute of Post-Graduate Medical Education and Research and the Secretary of the Council of the Post-Graduate Studies in Medicine, Calcutta University had published a notice containing general information for admission to M. D.. M. Section and several Diploma Courses of the University of Calcutta for the session of 1982. Twenty-five seats including five reserved for the West Bengal Medical Service were available for said M. S. (General Surgery) Course. Candidates were to be selected in order of merit determined on the basis of marks secured in the written test examination (total 75). past career total 20) and a weightage (5 marks) where applicable. According to the General Information, in the written test examination 75 objective type of questions, each bearing one mark were to be answered in one hour's time, provided, that, for each incorrect answer 1/2 mark in the shape of negative marking was to be deducted. The minimum qualifying mark for admission to the said course was fixed at 25 marks out of 75.

4. The written test was held on 26th June. 1982 and the question papers given to the examinees including the petitioner, among others, contained the following instructions:--

(a) Choose only one most appropriate answer against each question and put that particular answer no. only in the box provided against the respective question. No. in the answer script.

(b) More than one answer if recorded against any question will be treated as wrong answer.

(c) For each wrong answer 1/2 mark would be deducted and for each correct answer one mark will be awarded. It appears that the University of Calcutta had caused to be prepared model of "one most appropriate answer" in respect of each question set in the said test and the answers submitted by the examinees including the petitioner were evaluated with the help of computer. The petitioner's name was not included in the list of candidates provisionally selected for admission to M. Section (General Surgery)" Course. 1982.

5. According to the respondents, out of 75 questions, the petitioner had given 39 correct answers. 33 incorrect answers and he had also left three questions unanswered by not attempting two questions and by giving a note of interrogation against one question. According to the calculation of marks made by the respondents, the petitioner had obtained only 22.5 marks out of 75 marks. According to the respondents, on account of wrong answers given by the petitioner 16.5 marks had been deducted from the petitioner's total mark of 39 and 22.5 marks obtained by him were below the qualifying marks. Therefore, the

petitioner was not selected for the said Course.

6. The petitioner's main objection to the validity of the said written test for admission to M. Section (General Surgery) Course is on the ground that the questions set were not at all objective type of questions and that the model answers prepared by the University were not in fact the most appropriate. Thus, the University had arbitrarily and capriciously held the said written test for admission to the course and had wrongfully and illegally excluded the petitioner from selection although his answers to the questions set were correct and he ought to have been awarded marks for his answers which were adjudged as wrong. Mr. Nisam Chakrabarty, learned advocate appearing on behalf of the petitioner, has submitted that a question may be called an objective one only when there is only one correct answer to it and the rest are all incorrect. If it is not so and if there is more than one correct answer to a question, the same cannot be considered as an objective type of question. Because in such a case, according to Mr. Chakrabarty, the candidates would be left to a game of chance. Mr. Chakrabarty has submitted that elimination of a candidate from the field of choice must be on reasonable and rational grounds. Therefore, an admission test ought to be an objective one and not vague and irrational. Mr. Chakrabarty has further submitted that instructions in the question papers supplied to the candidates were also vague inasmuch as the candidates were asked to give "one most appropriate answer", which, according to Mr. Chakrabarty, was not equivalent to "the most appropriate answer. In course of hearing the University of Calcutta produced the model answers for the questions set in the said written test. The petitioner has seriously disputed the appropriateness of the said model answers and according to him, the answers given by the petitioner were equally correct and appropriate. In this connection, the petitioner had relied upon certain medical books. The respondents in their turn have tried to justify the model answers prepared by the paper-setter by relying on some medical text-books which they claim to be authorities on the subject.

7. Before I consider the merits of the petitioner's claim, I may first dispose of a preliminary objection raised by the respondents. According to the respondents, the petitioner did not mention in his application for admission to the course that he was working in the Gramophones Company of India Ltd. from 18th Jan., 1982. He also did not produce any certificate from his employers that they had no objection to his application being considered. The petitioner being guilty of suppression and concealment of the said facts, his admission was liable to be cancelled. The petitioner by his supplementary affidavit affirmed on 10th March 1983 has, inter alia, stated that since 18th Jan., 1982 he had been working as a Medical Officer in the Gramophone Company of India Ltd. On 10th Jan., 1983 he had written to his employers to accept his resignation with effect from 21st Jan., 1983. On 21st Jan., the Gramophone Company of India Ltd., accepted the petitioner's resignation and released him from duty with effect from 1st February 1983. I am of the view that on the aforesaid ground this writ application is not liable to be dismissed in limine. The respondents did not reject the petitioner's

application for admission to the Master of Surgery (General) Course on the ground that he did not fill up the space provided in the application relating to employment, if any. held by a candidate. The petitioner was allowed to sit in the written test and according to the respondents, he was not selected because he failed to secure qualifying marks. Although he had left blank the aforesaid space provided in his application, the respondents had never called upon the petitioner to furnish information about employment, if any. held by him and to submit a "No objection" certificate from his employer. The respondents accepted his application and had allowed him to appear in the written test. Therefore, at this stage while considering whether or not the said admission test was lawfully held and whether the petitioner had been validly denied admission. I cannot permit the respondents to raise the aforesaid preliminary objection regarding alleged defects in the petitioner's application for admission to the course.

8. Undisputedly, the Calcutta University is an "authority within the meaning of Article 12 of the Constitution and therefore while granting admission to its academic courses, the University cannot discriminate or treat the candidates unequally. The University or its Council of Post-Graduate Studies in Medicine cannot also act unfairly, arbitrarily and capriciously in the matter of holding an admission test. At the same time, it is necessary to remember that courts of law are slow to interfere with academic freedom of educational institutions (see *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, and *Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman*, . But the above principles do not amount to any inflexible rule that the courts ought not to interfere even when the University Authorities might have acted in violation of the Fundamental Rights of the petitioners or had acted illegally and in breach of their statutory duties and obligations. In recent years when courts of law have come to conclusion that academic authorities have acted illegally or unconstitutionally, they have not only quashed and set aside the decisions and actions of academic authorities but on occasions also have passed affirmative orders, inter alia, by way of directions for admission to a course etc. (see the observations of Krishna Iyer, J. in the case of *State of Kerala Vs. Kumari T.P. Roshana and Another*, and in *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, . In the case of *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, the Supreme Court, with reference to admission to educational institutions, had observed that equal opportunity ought to be given and classification in these matters must be free from vice of discrimination. The Supreme Court was of the view that the quantum of reservation of seats should not be excessive, but, in the said case, the challenge against vires of reservation was left open in the absence of sufficient materials to decide the issue. The Supreme Court had, however, observed that the petitioner of the said case ought to be given a chance to do his post-graduate course, if the rules of attendance did not stand in the way and the Medical Council made an exception by agreeing to addition of one seat as a special case for the said year. Most of the reported cases cited at the bar, dealt with the validity of rules of admission to different educational courses.

In the case of *State of Kerala v. Dr. K. U. Gopalakrishnan* AIR 1980 SC 1230, the Supreme Court held that 2% open seats for candidates from all the Universities in India outside Kerala ran counter to the constitutional directive of equal opportunity. The court decided to reconstruct for the year in question a practical admission formula by directing that the appellants 2 and 3 would be entitled to continue their course and the appellant No. 1 would move the respondents for permission to continue the studies.

9. I now proceed to consider the merits of the petitioner's claim for admission to the aforesaid course. At the outset, I may point out that the University of Calcutta and the Council for Post-Graduate Studies in Medicine were entitled in law to prescribe regulations and/or rules for admission to the Course in question. In exercise of their said powers, the respondents could also hold an examination or tests to select candidates according to merit. I have already mentioned that in the General Information for Admission to the M. S. (General Surgery) Course and other courses for the year 1982, issued by the Secretary, Council of Post-Graduate Studies in Medicine, Calcutta and the Secretary, Institute of Post-Graduate Medical Education and Research had, *inter alia*, notified that the candidates would be selected in order of merit determined on the basis of marks secured in the written test examination in which seventy-five objective type of questions would be set. I reject the extreme submission made on behalf of the petitioner that since the said General Information which incorporated relevant rules and regulations did not define the expression "objective type of questions." To uphold the respondents' right to set questions according to their choice would mean giving them unbridled powers or that the questions set in the Written Test conducted for admission to M. S. (General Surgery) Course were *ultra vires*. For the purpose of selection according to merit, the respondents were entitled to evolve and prescribe the procedure for the holding of the written test. It was for the examining authorities to decide the nature of the question set for testing the educational attainments of the candidates and their understanding and the degree of their familiarity with the subjects in question. Objective type of questions which do not require elaborate and reasoned answer and the said questions are required to be answered by making a choice or selection of the appropriate answer from among the alternatives. Such objective type of questions are set in various examinations to test the candidates' reading and understanding of a subject and in order to discourage cramming and reliance on notes and key books etc. Therefore, I find no substance in the contention of the petitioner that holding of the objective test for admission to M. S. (General Surgery) Course was irrational or invalid in any way.

10. The University has claimed that in the Written Test multiple choice questions were set and the candidates were asked to "choose only one most appropriate answer against each question." Mr. Nigam Chakraborty, on the other hand, has contended that deliberate absence of the definite article "the" before the expression "most appropriate answer" indicated that there were more than one appropriate answer to each question set in the said written test. Mr. Chakraborty

has further submitted that the answer to those questions given by the petitioner which find support in the medical, books relied upon by him could not have been considered as incorrect merely on the ground that his said answers were not in conformity with the model answers prepared by the paper-setter and the petitioner ought to have been awarded marks for his said answers. I find no substance in the foregoing submissions made on behalf of the petitioner. While setting objective questions which contained multiple choices, the respondents were entitled to ask the candidates to give most appropriate answer. Absence of the definite article "the" did not really make any difference in the meaning. It was perfectly understandable that from among the alternative answers to each question, the candidates were asked to select most suitable or fit answer. The word "most" which was a superlative adjective indicated what exactly the candidates were expected to do. i. e.. to choose that answer which was appropriate or suitable in the greatest or highest degree. Therefore, it was not relevant that more than one alternative mentioned in the question might be partially correct because the candidates were expected to choose amongst the alternatives the answer which was appropriate to the greatest or highest degree.

11. The petitioner in his several affidavits with reference to various medical text-books has claimed that his answers for which no credit marks were given to him in the Test were also correct. The respondents have disputed the authority of some of the medical books upon which the petitioner had placed reliance. The learned advocate for the petitioner in course of his submission wanted to place before me passages from the medical books upon which his client relies. I had declined to do so. It is not within the scope of this Rule to hold a review by the court of the answers given by the petitioner in the written admission test. Words "appropriate" and "correct" do always not carry same meaning. Appropriate means suitable or fit. whereas correct means right or accurate. AS already stated, the examinees were called upon to give answers which were most appropriate, i. e.. which were in the greatest and highest degree fit. The paper-setters had themselves prepared model of most appropriate answers. In making such choice of most appropriate answers the respondents relied upon some medical books whose authority have not been questioned by the petitioner but the petitioner's endeavour has been to establish that his answers to the questions were also correct according to the medical books mentioned in his affidavits, I also may observe that a writ proceeding is not a proper forum for deciding weight and value to be attached to the different medical books referred by the two parties. I am not prepared to enter into the said questions particularly when I find that the model answers prepared by the respondents were not incorrect and the petitioner has not proved that there was any lack of bona fide on the part of the respondents in selecting these model answers as most appropriate by relying upon well known medical books. There is no ground for holding that the respondents had acted arbitrarily, capriciously or in violation of rule of law. The petitioner and all other applicants who sat for the written test in question were equally and similarly treated and their answers were examined

and marked on the basis of the same model answers prepared beforehand.

12. At one stage of his submission Mr. Chakraborty has submitted that a Special Officer may be appointed by the Court for obtaining his opinion about the most appropriate answers to the questions in the written test. I am unable to accede to the said prayer which would mean in substance directing a review of the model answers prepared by the paper-setters. I cannot adopt a procedure by which the paper-setters themselves would be practically placed in the position of examinees and model answers prepared by them would be tested at the instance of an examinee who had failed to qualify in his written test.

13. Mr. Gupta, learned Additional Advocate General, appearing on behalf of the respondents, has correctly pointed out that the petitioner has not disputed the authorities relied upon "by the paper-setters for preparing model answers but his whole case is that answers given by him in the written test were also correct, and, therefore he ought to have been awarded marks for the said answers. The petitioner has further claimed that the books and authorities mentioned in his affidavits support his said claim that his answers were also correct and therefore were equally appropriate. But neither the court itself nor a Special Officer appointed by it can assume the role of the paper-setter and decide from among the alternatives indicated in the question paper which were the most appropriate. Secondly, the court is not expected to itself make a review of the petitioner's answer paper. In case there was any provision for review in the Examination Rules, in appropriate cases, the court might direct the University to review the script. The petitioner has not pointed out any such provision for review. In case, the respondents had acted mala fide or had adopted arbitrary and unreasonable procedure for holding the Admission Test, this Court might have interfered and compelled the respondents to act and proceed according to law inter alia by holding fresh Admission Test fairly, reasonably and impartially. I have already observed that there is also no evidence that the other candidates who appeared in the Admission Test were in any way misled by the manner of setting of questions. Further, in the event the petitioner had successfully established that the Written Test for admission to the M. Section (General Surgery) Course, 1982 was not held in accordance with law then the appropriate order would have been to cancel the Test and to direct the respondents to hold a fresh admission test in accordance with law. Even if the petitioner's contentions were upheld, the petitioner could not claim that he should be straightway admitted to the Course. I have already held that the petitioner has failed to substantiate that the Admission Test was invalid and illegal. Further, nearly a year has passed since the date of holding of the said test for admission to M. S. (General Surgery) Course, 1982. Therefore, the court in its discretion ought not to make any order which might interfere with the studies of those students who have been already admitted to the Course and also prevent them from further prosecuting their studies.

14. Mr. Chakraborty has referred to the order dated nth Feb. 1983 passed by my

learned brother Monoj Kumar Mukherjee J. disposing of Civil Rule No. 8099 (W) of 1982 obtained by Bhagbati Charan Mahanti. In my view, the said order is not relevant for deciding the points involved in the present case before me. The petitioner in Civil Rule No. 8099 (W) of 1982, who was a Member of the West Bengal Medical Service, was selected from the category of seats reserved for Members of the West Bengal Medical Service to M. S. (General Surgery) Course. But his admission was purported to be cancelled on the ground that he did not serve for minimum three years in rural areas. After the said Rule was issued, the State Government had informed the University that they had no objection to considering the case of the petitioner in Civil Rule No. 8099 (W) of 1982. Accordingly, Manoj Kumar Mukherjee J. allowed the said writ application. The University and other respondents were directed to allow the petitioner to continue his studies in the M. S. (General Surgery) Course, it may be noted that Monoj Kumar Mukherjee J. recorded that his order will not also prejudice the continued study by one Dr. Pradip Chakraborty in his said course who had presumably been already admitted in the seat claimed by the said petitioner.

15. The petitioner's case stands on an entirely different basis. He challenged the written test in which he failed to secure qualifying marks. He had questioned the choice made by the paper setters of most appropriate answers to questions asked in the Test. I have rejected the petitioner's submission on the said point. Although I do not propose to strike down the admission test on the grounds taken in the writ petition. I cannot however overlook the hardship which would be caused to the petitioner in the event the petitioner is not allowed to continue further studies in M. S. (General Surgery) Course. Under orders of T. K. Basu, J. (as he then was) on 20th Dec. 1982 the petitioner no doubt was given admission without prejudice and subject to the decision in the Rule (vide the letter dated 27th Dec. 1982 written by the Secretary, Council of Post-Graduate Studies in Medicine, Calcutta to the Head of the Department of General Surgery, Institute of Post-Graduate Medical Education and Research). The petitioner in para 12 of his affidavit dated 12th Mar. 1983 stated that he had been admitted to the said post-graduate course by creation of an extra seat and he had been pursuing his studies without dislodging any other candidate. According to the petitioner, the basic classes were due to be concluded in or about the month of Mar. 1983. On 11th Jan. 1983 the Secretary of the University College of Medicine had allotted the petitioner to the Calcutta National Medical College for thesis work and training. The Head of the Department, Calcutta National Medical College had allotted the petitioner under Professor B. Mukherjee for the said studies. The petitioner has further claimed that he had already submitted the synopsis of his thesis to the Secretary, Council of Post-Graduate Studies in Medicine and had made considerable progress in the said work.

16. The University's stand regarding the impugned Admission Test has been vindicated and therefore the University may legitimately consider whether it would now take a humane view about the petitioner's case and the University may decide whether he may be allowed to complete the said course. I make it

clear that in case the University makes any relaxation in favour of the petitioner, the same would not be considered as a precedent.

17. I. accordingly, discharge this Rule. I however stay the operation of my order for a period of two months to enable the respondents to consider the petitioner's case in the light of the observations made in the judgment.

18. There will be no order as to costs.