
(1985) 04 CAL CK 0017
In the Calcutta High Court
Case No : F.M.A. No. 885 of 1983

Amalendu Santra

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision : 24-04-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1986 Cal 153

Hon'ble Judges : S.N. Sanyal, J; B.C. Ray, J

Bench : Division Bench

Advocate : Rabindra Nath Mitra, Kalyanmay Ganguly and Sunil Kumar Pan, for the Appellant; Sadhan Gupta and Himadri Barua, for the Respondent

Final Decision : Allowed

Judgement

B. Cray, J.—This appeal is at the instance of the petitioner and it has been preferred against the judgment and order passed in Civil Rule No. 13739 (W) of 1982 (reported in Amalendu Santra Vs. University of Calcutta and Others,) discharging the Rule on holding that the Respondents have not acted arbitrarily and capriciously and in violation of Rule of law in holding the Admission Test for selecting the candidates for admission to the M.S. Course in 1982 session. It was also held that there was no lack of bona fide in selecting model answers by the paper setters as most appropriate by relying upon well known text books.

2. The Appellant, who is a Medical Graduate of the Calcutta University applied in response to an advertisement made on April 12, 1982 in the Amrita Bazar Patrika for appearing in the selection test to be held by the Post Graduate Admission Board for selecting candidates for admission to the different Post Graduate Courses in Medicine including M.S. (General Surgery) Courses. Thereafter an Admit Card was sent to him with a copy of the notice entitled "General Information" purporting to contain the Rules and Regulations relating to the admission in the M.D./M.S. Courses of the University for the 1982 session. The said Rules and Regulations were purported to have been issued by the

Respondent No. 3, Secretary, Council of Post Graduate Studies in Medicine, University of Calcutta and by the Respondent No. 4, Secretary, Institute of Post Graduate Medical Education and Research laying down that objective type of questions would be set. The petitioner duly appeared in the said Entrance Examination for M.S. (General Surgery) held on June 26, 1982 with other candidates. The question paper 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 sheet.

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

(c) for each wrong answer 1/2 mark will be deducted and for each correct answer one mark will be awarded.

3. Seventy-five questions were required to be answered by an examinee by choosing the most appropriate answers out of the multiple answers suggested under each question within a period of one hour. The petitioner duly submitted his answer paper. The result of the written test were purported to have been worked out with the aid of computer. The petitioner submitted that the computer must have been fed with the model answer alleged to be the only correct answer or the most appropriate answer even though there are more than one correct answers to many of the questions and thereby purporting to regularise the mischief involved in the process. The alleged process of working out the result is not faultless as the computer was notified with other correct answers to some of the questions. On July 19, 1982 the Respondents Nos. 3 and 4 published a list of 25 candidates selected for admission to the said M. S. Course (General Surgery). This list did not include the name of the petitioner. The petitioner made representation on December 1, 1982 objecting to the purported exclusion of his name from the selection list and requested the authority concerned for evaluating his answers. Nothing was done by the authority concerned in this respect. Hence an application under Article 226 of the Constitution of India challenging arbitrariness, capriciousness of the method of setting questions with multiple answers and evaluating them with the key answers prepared by the paper setters was moved and obtained a Civil Rule being C.R. No. 13739 (W) of 1982 (reported in *Amalendu Santra Vs. University of Calcutta and Others*,) and also an interim order that the petitioner would be admitted in the M. S. Course provisionally subject to the decision of the Rule.

4. An affidavit-in-opposition, sworn by Sri Ajit Kumar Dutta, Secretary, Council for Post Graduate Studies in Medicine, University of Calcutta, the Respondent No. 3 has been filed on behalf of the Respondents Nos. 1 and 3. It has been stated that there were 25 seats in M.S. (General Surgery) Course of Calcutta University for which 5 seats were reserved for the members of Health Service (hereinafter referred to as the W.B.H.S.) and the remaining 20 seats were described as

General Seats. The petitioner appeared at the examination held on June 26, 1982 and he obtained only 22.5 marks out of 75 marks. The petitioner did not obtain qualifying mark i.e. 25 marks. The answer scripts were examined by computer machine and the petitioner answered 39 questions correctly and made 33 incorrect answers and he left out three questions by not answering 2 questions and by giving mark of interrogation against one question. It has been further stated that the procedure for selection of admission to the post graduate M.D./M.S. Course of study the question was well thought of and approved by the Calcutta University Council at its meeting held on March 12, 1982 framing the Rules and Regulations for admission of candidates to different Post Graduate Medical Degree and Diploma Courses of the Calcutta University conducted by the University College of Medicine for the 1982 session. The said rules provide that 75 objective type of questions, each bearing one mark, be set for each paper and are to be answered in one hour's time provided that for each incorrect answer there will be a deduction of 1/2 mark in the shape of negative marking. It was further provided in the said Rule that the admission would be made strictly on the basis of total marks obtained by the candidates and the minimum qualifying marks for admission in the course was 25 marks out of total 75 marks. It was also provided therein that 5 marks out of 25 marks were allotted for candidates rendering rural service for more than 3 years etc. and the remaining 20 marks were allotted on the basis of performance in the M.B.B.S. and Post Graduate Medical Examination of the candidates conducted by the University or Institution having a status of University. It has been further stated that by instructing the candidates to give most appropriate answer the candidates were instructed to give the answer which was acceptable to the reasoning of medical science as the most appropriate answer. The examination or test is no doubt aimed at judging the caliber of examinee which is sure to have been reflected in his performance in the answer book or sheets. It has also been stated that the model answers were prepared by a body of experts and these model answers are the most appropriate answers to the questions as considered by the said body of experts who prepared the same.

5. An affidavit-in-reply sworn on April 12, 1983 by the petitioner was filed reiterating the statements and allegations made in the petition.

6. A supplementary affidavit has been filed by the petitioner affirmed on April 12, 1983. It is stated in paragraph 4 of the said supplementary affidavit that the question numbers as mentioned in that paragraph were evaluated as incorrect though it will appear that the answers given by the petitioner to the said 30 questions are one of the correct answers according to the authoritative medical books and the model answers of the University may not be the correct answers or the most appropriate answers to the said questions. A copy of the note prepared by the petitioner with reference to the question papers have been annexed as Annexure "C" to the affidavit. It has been further stated in paragraph 6 that if the correct answers given by the petitioner are treated as incorrect because of the same not tallying with the model answers of the University, it will

amount to assessing correct answers as incorrect answers and thereby subjecting the petitioner to wrongful exclusion from the field of consideration for selection for admission to the said post graduate course by the pretended recourse to the arbitrary ad hoc and discriminatory procedure.

7. An affidavit-in-opposition to the supplementary affidavit has been sworn by Sri Ajit Kumar Dutta, the Respondent No. 3 on April 26, 1983 reiterating the statements and allegations made in the affidavit-in-opposition. It has been stated therein that the key answer which has been made by the paper setters are the most appropriate answers and as such the assessment of the petitioner's answer with reference to the key answers are not made arbitrarily or capriciously.

8. The main argument on behalf of the petitioner is that all the questions which were set by the paper setters are not of objective type of questions inasmuch as they do not lead to only one most appropriate answer, but they suggest more than one correct answers and as such the evaluation of the answer papers submitted by the petitioner with reference to the key answer which has been fed to the computer cannot be said to be faultless inasmuch as the other correct answers to the said question were neither considered nor fed to the computer for evaluating the answers submitted by the petitioner. It has, therefore, been submitted that the evaluation of the answer script and the assessment of marks on such evaluation is highly arbitrary, unreasonable and violative of the rule of law.

9. Question No. 9 is as follows : --

9. In a healthy 70 Kg. male one of the following is incorrect.

- (1) Total body water measures 40 litres.
- (2) Extracellular fluid volume measures 8 litres.
- (3) Plasma volume is 3.5 litres.
- (4) Third space fluid is one litre.
- (5) Insensible loss ranges from 700-1200 ml/day.

This question has been quoted from Surgical MCQ's by J. L. Craven & J. S. P. Lumley, from Question No. 2 at Page No. 2. The Key Answer suggested by the University is No. 2 whereas the petitioner's answer is No. 3. According to the said MCQ's the key answer is wrong and the answer given by the petitioner is correct. Therefore, the Key, Answer is demonstratively wrong.

10. Question No. 4 is as follows : --

4. Which is the best treatment for established gas gangrene.

- (1) Immediate multiple incisions over the whole volume of gangrene.
- (2) Amputation.

- (3) Continuous penicilline drip.
- (4) Continuous metronidazole drip.
- (5) Hyperbaric oxygen chamber.

The Key Answer suggested by the University is No. 5 whereas the answer of the Petitioner is No. 1. This question is an ambiguous one inasmuch as it suggests both the treatments i.e. Nos. 1 & 2. Moreover No. 5 cannot be taken recourse to if the pressure chamber is not available. Both the aforesaid treatments are suggested by Bailey & Love's Short Practice of Surgery, 18th Edn. at page 33 and Schwartz' Principle of Surgery, 3rd Edn. Vol. I at page 204. Therefore both the answers being correct there cannot be any deduction of 1/2 mark instead of giving one mark to the answer given by the petitioner.

11. Question No. 17 is as follows : --

17. The diminished oxygen consumption in septic shock is due to :

- (1) Failure of oxygen transport in the lungs.
- (2) Diminished blood flow in the periphery.
- (3) Arteriovenous shunting in the micro-circulation.
- (4) Increased oxygen utilisation by the cells.
- (5) None of the above.

It has been quoted from Question No. 32" at page 18 of MCQ's. This question is ambiguous inasmuch the key answer suggested by the University is No. 1, as well as the answer suggested by the petitioner is No. 2 and both are correct. This is due to the fact that the question is ambiguous suggesting more than one correct answer. This is clear from Baifcey & Love's Short Practice of Surgery, 18th Edition, Vol. I, page 83 and Schwartz's Principles of Surgery, 3rd Edition, Volume I, page 175.

12. Similarly the Question No. 23 is as follows : --

23. Bed Sores.

- (1) Can be prevented by rubber mattress.
- (2) Can be prevented by changing the position of the patient every 6 hours.
- (3) Are due to local infection.
- (4) Are due to local ischaemia.
- (5) Annemia is the main cause.

This question is also ambiguous as the key answer No. 4 suggest the cause of bed sore whereas Answer No. 2 given by the Petitioner is the treatment for preventing bed sore. This is also evident from Baile & Love's Short Practice of

Surgery, Page 171 and also Schwartz's Principle of Surgery, 3rd Edition, Volume I, Page 550. Both the answers are correct.

13. Question No. 32 is as follows : 32. Hiatus hernia.

- (1) Usually occurs through a defect in the diaphragm to the right of oesophagus.
- (2) Usually associated with gastric cancer.
- (3) Is a congenial defect,
- (4) Are frequently accompanied by occult G. I. blood loss.
- (5) Selective vagotomy is the best treatment.

The Key answer is No. 4 and the answer of the Petitioner is No. 1. It appears that this question is ambiguous as the stem is defective. The answer No. 1 is also a correct answer according to Baile & Love's Short Practice of Surgery, Page No. 795 and also according to Schwartz's Principles of Surgery, 3rd Edition, Volume II, Page 1097.

14. As regards question No. 33 which is as follows :

33. Cancer of the Oesophagus.

- (1) Earliest symptom is intermittent dysphagia,
- (2) Adenocarcinoma of oesophagus is the usual type of cancer in India.
- (3) Gastrostomy provides good palliation.
- (4) Radiotherapy is curative in the majority.
- (5) Surgical excision of the tumour is possible in a small minority of patients.

The key answer is No. 5 and the petitioner's answer is No. 1. Both the answers are correct. The question is ambiguous as the stem is defective inasmuch as the answer given by the petitioner refers to the symptom whereas the key answer refers to the treatment of the disease. This will be evident from Baile & Love's Short Practice of Surgery at Page 806, it is also supported by the Schwartz's Principle of Surgery, Volume II, Page 1105.

15. Question No. 43 is as follows :

43. Penetrating wounds of the abdomen :

- (1) Depth can be judged by probe.
- (2) Always result in abdominal wall hernia.
- (3) Treat conservatively if weapon is less than 3 cm.
- (4) Explore only when signs of peritonitis develop.
- (5) Immediate exploration under anaesthesia is mandatory.

Question No. 43 has been taken from question No. 177 of Surgical MCQ. The key answer is No. 1 which is false even according to MCQ and as such the key answer is demonstratively wrong. Moreover the answer No. 5 given by the Petitioner is correct according to Baile & Love's Short Practice, Page No. 13 and Schwartz's Principle of Surgery, Volume No. 1 page 249. The key answer is No. 1 whereas the answer given by the petitioner is No. 5. The petitioner's answer is correct according to Baily & Love's Short Practice of Surgery, Page 13.

16. The remaining questions referred to by the petitioner in his supplementary affidavit are not, in my opinion, ambiguous and the key answers prepared by the respondents to those questions are not demonstratively wrong.

17. Therefore, it appears that out of the question set two of the questions being questions Nos. 9 and 43 the key answers suggested by the University are demonstratively wrong. So there cannot be any negative deduction of marks from the petitioner, on the other hand the petitioner is entitled to get one mark for each of these questions and there will be no deduction of 1/2 marks for giving answer not tallying with the key answer for each of these questions. In other words the petitioner is entitled to get in total 3 marks. I have already stated hereinbefore that the other five questions are ambiguous as they suggest more than one correct answer. Therefore the petitioner cannot be penalised for his answer being not tallying with the key answers by not only depriving him from getting one mark for each of the correct answer, but also deducting 1/2 marks for each of the correct answers given by the petitioner on the ground that the same did not tally with the said key answers. It is pertinent to refer in this connection to the decision of the Supreme Court reported in Kanpur University and Others Vs. Samir Gupta and Others, , where it has been observed that where the key answer is clearly demonstrated to be wrong and the answers given by the student are correct the examinee is entitled to get marks allotted for the said questions and there will be no negative marking for the answers given by the examinee not tallying with the key answers provided by the paper setters. It has also been observed by the Supreme Court in the case of Abhijit Sen and Others Vs. State of U.P. and Others, that where the questions are tricky being set by the paper setters i.e. the question suggests more than one correct answer and one correct answer has been suggested by the examinee, the examinee is entitled to get the mark allotted for such question and there will be no negative marking for the examinee's answer not tallying with the key answer.

18. For the reasons aforesaid, the Appeal is allowed and the judgment and order passed by the learned Trial Judge are reversed. The Respondents are directed to add marks to the petitioner in respect of the aforesaid questions, the key answers to which are held demonstratively wrong and also in respect of ambiguous questions where the answer given by the petitioner is also a correct answer according to the authoritative medical text books. If the authorities after making the evaluation by giving the marks to the petitioner find that the petitioner is entitled to get admission in order of merit then the petitioner will be

permitted to continue his studies in the M.S. Course (General Surgery). If, however, it is found otherwise after adding the marks the University authorities will consider whether they will allow the petitioner to prosecute his studies in the M.S. Course (General Surgery) in consideration of his continuing his studies on ad hoc basis on the strength of the interim order passed by the learned Trial Judge. There will however be no order as to costs.

19. All interim orders are vacated.

S.N. Sanyal, J.

20. I agree.