

(2010) 12 AHC CK 0079

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 42798, 44713 and 46608 of 2010

Anshuman Tripathi and Others

APPELLANT

Vs

Banaras Hindu University and Another

RESPONDENT

Date of Decision : 20-12-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 2 ADJ 729

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—All the four Petitioners in these three writ petitions have come up with a common prayer for annulling the results of the LL.M. Entrance Examinations, 2010, conducted by the Banaras Hindu University and for a direction to hold fresh Entrance Examinations and to declare the results accordingly. An additional prayer has been made in Writ Petition No. 44713/10 for granting admission to the Petitioner therein on the basis of the marks obtained after revaluation.

2. The ground for challenge in all the three writ petitions initially raised was founded on a heavy suspicion and an allegation of violation of procedure and subsequently an amendment was carried out bringing on record certain facts to substantiate the apprehension of the Petitioners that irregularities had been established on an enquiry by the University itself. These facts relating to the developments, after the complaints were enquired into, are also indicated in the counter-affidavit filed on behalf of the University which has been relied upon by the Petitioners in support of their contentions.

3. One of the Petitioners in Writ Petition No. 42798/10 appeared in person and the other petitions were represented through their respective counsels. Sri Vinod Kumar Singh, learned Senior Counsel alongwith the Hemant Pratap Singh has

appeared for the Respondent-University. The pleas raised being common, a counter-affidavit filed on behalf of the University gives reply to all the three writ petitions and the Petitioners have also replied to the same. Learned Counsel for the parties have advanced their submissions and have consented for the final disposal of the writ petitions on the basis of the existing pleadings.

4. The Banaras Hindu University is established under an Act namely Act No. 16 of 1915 passed by the Parliament. The University has its own statutes and ordinances and u/s 5-A(3)(b), the Controller of Examinations is Incharge of all examinations to be conducted by the University. The academic affairs of the University are governed by the resolutions of the Academic Council, and the administration by the resolutions of the Executive Council, wherein the Vice Chancellor of the University is the Chairman. The Vice Chancellor also has certain residuary powers u/s 7-C of the Act.

5. This dispute centres round the irregularities alleged in relation to the 2010 L.L.M. two years' Masters Course Entrance Examination, 2010 for which the University has 38 seats to offer. The Entrance Examination was announced to be held on 20th May, 2010 and a brochure was issued by the University which has been brought on record through the counter-affidavit giving the entire information for the said Entrance Examinations. Clause 15 of the said Information Brochure provides for the Entrance Test consisting one paper of 120 minutes duration carrying a total of 450 marks containing 150 multiple choice questions. The mode of answer is through a OMR (optical mark reader) Sheet. The answers had to be attempted by identifying the correct answers and darkening the circle as provided for in the said sheet. The answer sheets were to be evaluated as per the Clause 16 of the Information Booklet through a computerized scanner. Clause 18 clearly prohibits any scrutiny or revaluation of the answer sheets on any ground, and any representation or query with regard to the same shall not be entertained.

6. All the Petitioners appeared in the examinations and the results on the first occasion were declared on 26th June, 2010. The Petitioner No. 1 in Writ Petition No. 42798/10 Anshuman Pratap obtained Rank No. 91 and the Petitioner No. 2 therein Ankit Rai obtained Rank No. 41. Similarly, Petitioner Anshuman Singh in Writ Petition No. 46608/10 obtained the 120th Rank. The Petitioner in the third writ petition has not disclosed his rank in any of the paragraphs of the writ petition. It is alleged and also admitted by the University that there were certain discrepancies in relation to three candidates in the evaluation by the Computerized Scanner, as a result whereof, the announcement dated 26th June, 2010 was annulled and a fresh result, after rectifying the errors, was announced on 28th June, 2010.

7. Certain other candidates who are not Petitioners before this Court, appear to have made complaints before the University about the irregularities in the examinations including the repetition of questions from the previous years question papers, which according to them was in violation of the instructions,

and on such complaints so received on 30th June, 2010 a Note was put up on which the Vice Chancellor passed an order calling for a report from the Controller of Examinations.

8. The Controller of Examinations in turn called upon the Additional Controller to submit a report which was compiled and forwarded on 7th July, 2010. The said report has been brought on record as Annexure CA-3 to the counter-affidavit. The Controller of Examinations on the report made a proposal to the Vice Chancellor for carrying out an enquiry in view of the deficiencies and irregularities referred to therein, upon which the Vice Chancellor passed an order on 8th July, 2010 constituting a committee of five Professors to look into the grievances and submit a report.

9. A resolution was passed by the Committee so constituted on 12th July, 2010, which has also been brought on record as Annexure CA-5, making recommendations for carrying out a third evaluation in view of the discrepancies noticed and for taking appropriate action. This resolution was forwarded by a proposal of the Additional Controller on 13th July, 2010 through an Office Note which is Annexure CA-7 to the counter-affidavit followed by the proposal of the Controller dated 14th July, 2010 Annexure-8 to the counter-affidavit of the University. The Vice Chancellor on 14th July, 2010 passed an order accepting the said recommendations for revaluation and the same was accordingly carried out.

10. After this third exercise the results were finally declared on 21st July, 2010 and fresh rankings were awarded according to the merit obtained by the candidates. According to the University, the errors which had crept in stood rectified in relation to all 1052 candidates who had appeared in examinations.

11. All this exercise therefore raised a suspicion in the minds of the Petitioners and they assailed the action of the University through these writ petitions. The matter was heard on 25th November, 2010 on which date an order was passed calling upon the University to put to notice all the 38 candidates who had been selected in the said examination in order to further proceed in the matter and accordingly the said candidates were impleaded whereafter the matter was finally heard.

12. Needless to mention that against the aforesaid order dated 25th November, 2010 the Respondent-University filed an appeal which was disposed of on 14.12.2010 with the following observations.

All the three matters are arising out of an interim order passed by the learned Single Judge dated 25.11.2010. Two matters i.e. Special Appeal Defective Nos. 1155 of 2010 and 1156 of 2010 and one matter i.e. Special Appeal No. 1994 of 2010 have been shown as regular.

Since one certified copy is applicable to all the three matters, defect, if any, for non filing of certified copy of the order is condoned. Regular number will be given to all the appeals.

It appears to us that the Court has passed an elaborate order at interim stage but it is yet to reach finality on the basis of the notice pre-served upon the selected candidates. Therefore, at the stage we do not prejudge the mind of the Court but we only add that at the time of deciding the issue, the Court will also consider the Division Bench judgment of this report reported in E.S.C. (All) 191 Praveen Kumar Singh v. Vice Chancellor Banaras Hindu University Varanasi and Ors. with regard to non disturbance of the schedule since the candidates have only been admitted but the first semester examination is scheduled to be held on 18.12.2010.

With the above observation, we dispose of all the special appeals, however, without imposing any cost.

The reference to the judgment in the aforesaid order of Praveen Kumar Singh v. Vice Chancellor, BHU, 2003 (5) ESC 191.

13. The submissions raised on behalf of the Petitioners cover a wide canvas, particularly the allegations of mass irregularities, repetition of questions which were prohibited under the own s of the University, manual rechecking, the repetitive revaluation of answer books and moderation of results being contrary to the statutes and ordinances, and failure on the part of the University to provide appropriate information as desired by the Petitioners under the Right to Information Act.

14. Further, the Petitioners also allege that they have been discriminated, inasmuch as, the University never made any announcement that it would be supplying the question paper and key answer of previous year entrance examinations, but the University under the Right to Information Act admittedly provided such information to 14 candidates out of whom 5 have succeeded in the Entrance Examination and, therefore, an inference should be drawn that it was not a mere coincidence, rather it was a deliberate and calculated move to extend benefit to certain favoured students. It is urged that if the University wanted to deviate from this practice of not providing the previous years question paper and key answers, then it ought to have made come out with a public notice so that all students could have taken advantage of the same, and having not done so the action of the University results in violation of Article 14 of the Constitution of India.

15. Ultimately, the Petitioners contend that the University itself has discovered the discrepancies and the serious irregularities in the examinations and on such a note, the only option left was to cancel the entire examinations, or to reevaluate the answer sheets of the Petitioners after adopting the course of moderation in order to accommodate all such candidates.

16. Sri V.K. Singh, learned Senior Counsel for the University submits that in order to avoid any misapprehension in the minds of the candidates, the Vice Chancellor in the exercise of his powers vested in him took immediate steps to rectify the errors as reported by the officials and a transparent exercise was

undertaken to restore the correct position of results. He submits that the allegations were enquired into, and a fresh evaluation was carried out under the guidance of the recommendations made by a five member expert committee appointed by the Vice Chancellor.

17. He contends that the allegations of discrimination on account of repetition of a large number of questions which came to the notice of a few students is unfounded, inasmuch as, the University was bound to give information as sought for under the Right to Information Act. Had the Petitioners also applied, they would also have received the information. He submits that, it is true that previously the University did not have any practice of allowing the candidates for entrance examinations to have access to previous years' question papers and key answers and even now there is no such practice, but the University is under an obligation to provide the information under the Right to Information Act. He therefore contends that there was no denial of any equality of opportunity and all the candidates have been examined on the same set of questions and key answers. The submission is that merely because five of such candidates have succeeded the same cannot by itself be proof of the fact that the candidates had been unduly favoured. Relying on the decision of Praveen Kumar Singh (supra) Sri Singh further submits that it will not be appropriate to allow any fresh admissions at this stage or alter the results which have been declared.

18. Having heard learned Counsel for the parties and one of the Petitioners in person, it would be apt to refer to the irregularities as noticed and discovered by the University itself. The report of the Additional Controller dated 7th July, 2010 is extracted hereinbelow:

Dated: July 7, 2010

Subject: LL.M. Entrance Test, 2010 -Allegation of Irregularity.

Representation dated 30.6.2010 of some of the students addressed to the Vice Chancellor may kindly be perused (Flag-A), wherein they have alleged about irregularity in LL.M. 2010 Entrance Test. The Hon'ble Vice Chancellor has ordered for immediate necessary action after thorough examination.

In the said representation, the representationists have requested to re-conduct the Test, after cancelling the earliest test on the following grounds:

(1) Question Booklet is deposited by the Controller of Examinations office after the examination is over. But some Examinees were provided Question Booklet of 2008 and 2009 Tests under R.T.I. Act and all 150 questions were repeated in the Entrance Test of 2010. Hence those Examinees are gainer than those who did not have Question Booklet of 2008 and 2009.

(2) While declaring the result of LL.M. 2010, irregularity was committed and some wrong examinees were selected. Besides, result was revised by three times.

In the mean time, another representation dated 3.7.2010 (Flag-B) signed by

three students have also been received in which they have requested that their R.T.I. Application be disposed of before registration of new students to LL.M. Course. In the representation, they have alleged about,

(1) Irregularity in publication of result since it was withdrawn for 24 hours from the internet.

(2) Difference in ranks and marks obtained in the two results and reasons therefor, and lastly,

(3) Many answers of questions which appear in 2010 paper are wrong. They have requested for republication of result after due inquiry. In this connect, the following is submitted:

(1) LL.M. Entrance Test was held on 20.5.2010 at Delhi, Kolkata, Hyderabad and Varanasi centres in which a total number of 1250 candidates appeared. After Tests are over, the question Booklet has been deposited back to us as per existing practice.

(2) As per present university rules, any person can obtain Question Booklet of any Test, already conducted, without any discrimination, under Right to Information Act, 2005. This year 14 persons have requested and were provided question booklets of 2008 and 2009 alongwith key, in respect of LL.M. Course. Allegation that those who obtained old booklet under R.T.I. were at advantageous position, is not on sound footing.

(3) The paper-setter for 2010 LL.M. Entrance Test was Dr. (Ms.) Thrity D. Patel of Nagpur. She was appointed from the list of Examiners recommended by the concerned Faculty. She has set the question paper of 2008 also.

(4) Regarding their allegation of repeating of the questions, it has been observed that about 39 questions from the Papers of 2008 and 33 questions from the paper of 2009 (total 72 questions) are repeated out of total 150 questions. A comparative chart is placed at (Flag-C). As per system always last year's question paper is sent to the Examiner as model with general instruction that questions or options within the question should not be repeated.

As per instant practice and rules, the complaint about question paper (Regular Examination) is to be brought to the notice within 48 hours of the conduct of the Examination and as such allegation of repetition of questions and privileged position of those who were supplied with old booklet under R.T.I. cannot be entertained at this stage.

(5) Regarding allegation of revision of the result, it is submitted that the results were revised for making genuine corrections. The result of LL.M. was prepared by the Computer Centre initially on 23.6.2010 and displayed on the website on 26.6.2010. After verification the above result was taken off from the website on 28.6.2010. The revised result was prepared on 29.6.2010 and displayed on the website on 29.6.2010 on account of the following:

(a) It transpired that the candidate, named, Vijayant Singh (R. No. 10765) had not filled up bubble of Set No. on the O.M.R. (answer sheet). It was wrongly evaluated, and as such he was awarded (-23) marks. Firstly it was a serious mistake on the part of the student and secondly the invigilator failed in his duty to point out the mistake to the student and left it uncorrected.

It is pertinent to mention here that seven candidates had filled the bubbles wrongly or had not filled it at all in the said Test. The correct set number is decided after checking the specific OMR sheet by the concerned processing team, in such cases. Sometimes even the specific Question Booklet has to be checked. Unfortunately this error escaped the attention of Processing team as well. However, after correcting the Set No. OMR sheet was evaluated and the student obtained 320 marks.

(b) The other reason for revision of result was that OMR (answer sheet) of two candidates, named, Vijay Kumar and Akhilesh Kumar Shukla (R. No. 10423 and 10422 respectively) were sticking to each other and drawn by scanner machine together and, therefore, (R. No. 10422 was given the result of (R. No. 10423) with and (R. No. 10423) shown absent. As such (R. No. 10422) which was attached with the OMR of R. No. 10423, was awarded (-6) marks. After it was detected in the final reconciliation of OMR Sheets and evaluated by right key. Thus (R. No. 10423) was awarded (330) marks, and (R. No. 10422) was awarded (273) marks. As such the result was revised once. There was no change in marks in respect of other candidates except in respect of above students. The above revision can be shown by the following Table:

S.No.	Roll No.	Name	Existing marks/ Rank as per result prepared on 23.6.10	Revised marks/Rank as per result prepared on 29.6.10
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1	10765	Vijayant Singh	-23/1052	320/43
2	10423	Vijay Kumar	Absent	330/36
3	10422	Akhilesh Kumar Shukla	006/1047	273/175

(c) The status of rank of the representationists dated 30.6.2010 can be shown by the following Table:

S. No.

Roll No.

Name

Existing marks/ Rank as per result prepared on 23.6.10

Revised marks/ Rank as per result prepared on 29.6.10

1.

10842

DayanidhiMishra

255/250

255/253

2.

10136

Rajeev RanjanPandey

262/221

262/224

3.

Vivek Kumar Dwivedi

No candidate was found of this name

4.

VinayakPandey

No candidate was found of this name

5.

10986

Manoj Kumar

312/55

312/57

6.

10322

Chandan Kumar

317/47

317/49

7.

10488

PurnenduMishra

156/677

156/680

8.

Rakesh Kr. Gupta

No candidate was found of the name

The change in ranks was on account of insertion of two ranks in merit list.

(6) In view of the repetition of questions, the answer of some of the questions of 2010, were checked up to ascertain as to whether there is any variation in the answers also. Prof. S.P. Singh, Faculty of Law was contacted and he has confirmed that some of the answers of the questions of 2010 question paper appear to be incorrect.

In view of the doubt on answers of questions, it was thought not proper to sent the result to the Faculty. The result of LL.M., has, therefore, been not forwarded to Law Faculty.

Submitted for consideration and further orders please.

ADDL. CONTROLLER OF EXAMS.

Controller of Examinations

19. The proposal on the said report by the Controller is also extracted hereinafter. It is after receipt of these reports that the Vice Chancellor proceeded to appoint an Expert Committee and the same was submitted on 12th July, 2010 which is extracted herein under:

A meeting of the Committee of the following members was held on 12.7.2010 at 3.00 P.M. in the Committee Room of the Controller of Examinations to review and correct, if required, the key of LL.M. Entrance Test 2010 Question Paper.

Members Present:

1. Prof. G.P. Verma, Faculty of Law, BHU
2. Prof. S.P. Singh, -do-
3. Prof. B.P. Singh, Faculty of Law, Allahabad University
4. Dr. A.K. Pandey, Faculty of Law, BHU
5. Dr. Raju Majhi, Faculty of Law, BHU
6. Prof. B.K. Panda, ACE (convener)

The committee reviewed the key supplied by the Examiner and unanimously resolved that the following questions are wrongly framed and, therefore, should be cancelled awarding 03 marks to all for each such question.

Q. Nos. 1, 18, 91, 107, 108, 109, 111, 112, 116 & 117.

The answers given by the Examiner for the following questions were found to be wrong and with the right answers a new key (enclosed) was prepared.

Q. Nos. 5, 19, 21, 23, 24, 27, 32, 40, 41, 47, 50, 63, 66, 72, 103, 110 & 150.

Members" signature:

- 1.
- 2.
- 3.
- 4.
- 5.

20. The minutes and the aforesaid reports, therefore, leave no room for doubt that the repetition of questions were in violation of the University's instructions and the concerned Examiner has also been punished. Incorrect answers and variations in key answers have also been noticed. The results therefore came to be altered and accordingly the rank of all the Petitioners were finally changed. Ankit Rai the Petitioner No. 2 in Writ Petition No. 42798/10 ultimately obtained rank 39. It is thus seen that he came quite close to qualify the examinations even though he could not succeed as there are only 38 seats.

21. The Vice Chancellor passed an order on 14th July, 2010 and after the revaluation which was carried out under the guidance of experts the results were finally announced on 21st July, 2010. The provisions in the brochure itself prohibits revaluation, yet in the wake of such irregularities and discrepancies the Vice Chancellor on the complaints received carried out revaluation and scrutiny. This was done in the larger interest of students even though the permissibility thereof is extremely doubtful under the relevant statutes and ordinances. The candidates themselves as per the brochure noted above are not entitled to seek any revaluation or scrutiny. However, in the opinion of the Court, in such a peculiar situation the Vice Chancellor rightly exercised his discretion in order to resolve the entire controversy by undertaking an exercise through an expert body in order to restore the faith of the students and maintain transparency.

22. The revaluation of the expert body therefore cannot be doubted on merits even if the same was impermissible under the rules of the University. The Vice Chancellor, therefore, in exercise of his residuary powers cannot be said to have acted arbitrarily or whimsically. At the same time, the University ought to have adopted the moderation system or any other plausible system in order to avoid any such discrepancies by preparing different sets of question papers. Not only this, the University should have adopted the mode of providing the copy of the OMR Sheets and the key answers either on Websites or otherwise so that the candidates appearing in the examinations are able to assess the outcome of their results in order to avoid any such discrepancies or irregularities as has been unearthed by the University in relation to the examinations in question.

23. The contention on behalf of the Petitioners that five candidates out of 38 who have been selected, had access to the previous years question papers and key

answers that had put them to an advantage, cannot be appreciated, inasmuch as, there is nothing on record to substantiate that there was any proof that such candidates had the source of information about the questions being repeated. In the absence of any such material, it cannot be said that those candidates who had obtained the information under the Right to Information Act were in any advantageous position due to extraneous considerations. Apart from this it is only five out of 14 candidates, who had obtained the previous years question paper and key answers, have succeeded in the examinations, inspite of the repetition of a large number of questions. This by itself indicates that they had no previous knowledge of repetition of questions. The Petitioners also could have applied under the Right to Information Act but in the opinion of the Court the University was also under an obligation to have at least brought this to the notice of all such candidates prior to the holding of the examinations keeping in view the fact that the University did not have any past practice of providing this information. On the contrary such information was always withheld and candidates had no access to either the question papers or key answers of the previous years.

24. To the aforesaid extent, the Petitioners are right in contending that the University should adopt a fair procedure to enable the candidates to know about their status in the examination and therefore, in view of the directions as noticed in the judgment dated 8th July, 2010, Special Appeal No. 554 of 2010, Dr. Arpit Jain and others v. Dr. Anurag Tiwari and Ors. it is hereby directed that the University shall in the forthcoming entrance examinations shall abide by the directions in the aforesaid judgment extending benefits to the candidates by providing them with a Carbon Copy of the OMR Sheet allowing them to retain the same after the examinations and also to make available the key answers to the questions after the declaration of results. The brochure should also include clear instructions about the availability of model question papers, Key answers or previous year papers and answers.

25. With the aforesaid observations, no relief so far as the cancellation of examinations can be granted, inasmuch as, the session has already commenced and the examinations of the first semester have also been held on 18th December, 2010. The cancellation would not allow this Court to grant mid-session admissions in view of the law stated in Praveen's case (supra). The error having been sincerely rectified, no cancellation is desirable at this stage. This judgment should not be however construed to be an approval of the irregularities already found and the University is expected to take due precaution to avoid encouraging litigation amongst students. A casual approach in holding examinations for a serious vocation like law cannot be appreciated. Those who are entrusted with the task of scrutiny should not lower the esteem of a privileged institution. Responsibilities in such matters cannot be converted into casualties due to sheer lack of sincerity. The University runs the risk of severe criticism for pitfalls that cannot be disguised.

26. The writ petitions are accordingly dismissed subject to the observations hereinabove.