
(2008) 05 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application No. 5815 of 2008

Aparna Vijaysinh Dodia

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 01-05-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2008) 05 GUJ CK 0003

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : Tushar Mehta, for the Appellant; Government Pleader for Respondent 1 and A.D. Oza, for Respondents 2 - 3, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—The petitioner has preferred the petition for appropriate writ to direct the respondent No. 2 to evolve a system of examining Biology question papers of English Medium students based on the English medium textbook of the said subject and it is also prayed to issue appropriate writ to direct the respondent No. 2 to suitably amend the model answer papers in the case of English Medium students so that no discrimination takes place between similarly situated students.

2. Heard Mr. Mehta, learned Counsel for the petitioner and Mr. A.D. Oza for the respondent Nos. 2 & 3 and Ms. Trusha Patel, learned AGP for the State Government.

3. Upon hearing the learned advocates appearing for both the sides, it appears that the principal grievance raised on behalf of the petitioner is that in the English medium text book, under the head of "Immunological Disorder" there are Sub-headings (i) Hyper sensitivity and (ii) Auto immunity, and the contention of the petitioner is that in Immuno Deficiency Diseases it is not typed as (iii) for showing as being sub-heading of Immunological Disorder.

4. In support of his contention, the learned Counsel for the petitioner has relied upon the Gujarati textbook for the very main heading- sub-head, wherein it is typed as (iii) for such immunological disorders (in Gujarati "Pratikarakta ni unap thi thata rogo") and therefore, while answering the same, based on the textbook, the student might not have mentioned Immuno Deficiency disease. The contention of the petitioner is that if the Immuno Deficiency disease is not mentioned in the answer, it would result into deduction of two marks and such will have to be faced by the English medium students as against the Gujarati medium students for the same subject. Therefore, it has been submitted that this Court may issue appropriate writ for ensuring that no discrimination takes place between the Gujarati medium students and English medium students.

5. Whereas, on behalf of the respondent Board, by filing an affidavit-in-reply, the expert opinion is produced which states that immuno deficiency disease are included in immunological disorders. However, it has been conceded that (iii) is not typed and there appears to be typing mistake, but considering the sub-heading of Immuno Deficiency Disease, it would fall under immunological disorder.

6. The affidavit of the Director, Gujarat State Board in School Textbooks is also filed, which reads at para 7 as under:

I say and submit that students are supposed to know the total number of immunological disorders and as per the textbook, there are three such disorders as mentioned at page Nos.156 and 157 of the textbook. The students cannot be allowed to take disadvantage of not mentioning of "(iii)" before the sub-heading "Immuno-deficiency Diseases". The material available for this topic contains the total number of immunological disorders. Therefore, there is no question of ambiguity either in the mind of the teachers or students, and right from the year 2005, the students are being taught in all the schools with regard to the said topic, and out of total 3,300 students, only the petitioner of this petition has raised this objection which is not sustainable academically.

7. The question of scope of judicial scrutiny by this Court in setting aside question papers and answer in maths subject in 12th standard for the year 2008 had come up for consideration before this Court in the case of Hiralben Madhukantbhai Vasani and Ors. v. The State of Gujarat and Anr. in Special Civil Application No. 5277 of 2008 decided on 16.04.2008 and this Court in the said decision, inter alia observed at para 5, 5.1 and 5.2 as under:

5. The legal position for the scope of judicial review appears to have been well considered by the Division Bench of Punjab and Haryana High Court in its decision reported in AIR 1996 Punjab and Haryana Page 132, after considering the decision of the Apex Court in case of Dr Muneeb-ul-rehman Haroon and Others Vs. Government of Jammu and Kashmir State and Others, In the said decision, the High Court of Punjab and Haryana observed as under:

The students have neither any constitutional right nor legal right to admission or

any other right except for consideration for admission if they fulfil the conditions of eligibility;

Providing of regulation affecting their chances of admission to higher studies by itself is not a touchstone under Article 14 of the Constitution of India;

The mere fact that change in style of paper was introduced later would be no ground to hold that the method of holding examination was bad;

The complaint of notice for a change being short would affect everybody equally adversely and the number of students taken the examination demonstrated everybody who had cared to sit in the examination and had an opportunity of doing so. Reference may be made to the decision in case of State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc.,

All students had the similar advantages/disadvantages. It is for the academicians to take into consideration all the factors while introducing the change in style. Ordinarily, their judgment should not be substituted by the opinion of the court.

It is only the mode of evaluation of the merit which has been changed which is the same for all irrespective of their categories or source.

The eligibility test provided to evaluate knowledge of the students cannot be struck down solely on the ground of inconvenience to those affected. It is the public interest approach which has to be given preference than to legalism, if at all any. One cannot be dogmatic or unrealistic in one's approach. There can be no litmus test or water-tight compartmentalisation nor there can be any mechanical approach bereft of ground realities to judge the validity of the rules. Neither fairness in procedure, with the growth of knowledge of science of administration and public expectation in the academic field permits nor judicial interference can be permitted, to freeze the creativity to evaluate the merit or the knowledge acquired for the University course.

The principles of fairness which needs bona fides honest decision bringing impartiality to one's mind on the problem. The courts are not ordinarily expected to judge the relative merit of the new system nor validity of a rule can be tested on the touchstone of fortunes of individuals, nor principles of "just expectation" can be invoked in its rigidity, without taking into consideration the facts and circumstances of each case.

It cannot be expected that a student would look for general rules operating at or about the time when he intensifies his preparation for the examination. The heights are reached not by sudden flight, reached by those who toil upward in the night while their companions slept, competitive examinations, neck to neck race and spare no pains to achieve the coveted goal. Quite often imponderable factors and fortuitous circumstances may affect the fate.

5.1 The aforesaid principles once again came to be considered by the Division Bench of the High Court of Punjab and Haryana in case of prof. Prof. V.S. Jolly Vs.

Guru Nanak Dev University, Amritsar, and it was further observed at para 7 as under:

The object of examination is to determine the level of knowledge acquired during the course of study by a student. There is no change brought about in the syllabus. The mode of determining level of academic knowledge acquired is fast changing in the field of education with the development of education system, and subjects. Mode of judging merit or knowledge acquired in subjects by Educational Institutions are not expected to be freezed. Right to the mode of examination is a part of administration of the University rather an important facet of it which can be regulated by reasonable regulations conducive for those who are to be governed by it. Evaluating knowledge by examination is just a method followed in academic fields. The mode or style of question papers or the nature of questions is the procedural aspect in assessing the knowledge acquired.

5.2 It was further observed at para 8 as under:

Mere fact of there being a short interval between examination and the change brought about in the system by itself is of no consequence when all the students are placed in the similar situation.

8. Therefore, if the facts of the present case are examined in light of the aforesaid scope of judicial review, it appears that there is a printing error in the text book in not printing "(iii)". The original text book which is made available during the course of hearing shows that the word Immunological Disorder printed in the main line shows as the main heading, whereas, sub-heading of (i) Hypersensitivity (ii) Auto immunity, are shown in the third letter by way of sub-paragraph. In the same manner, Auto Immuno Deficiency disease is also shown as sub-paragraph. Therefore, it cannot be said that immuno deficiency disease is a separate head, which may not fall under the main heading of Immunological Disorders. The aforesaid is coupled with the expert opinion invited by the Board and reproduced herein.

9. Further, as stated in the affidavit-in-reply of the Director of Text Book, the same is clear in the mind of the teachers or the students right from 2005.

10. Under these circumstances, it cannot be said that the question of Immunological Disorders could not have been properly answered had the students understood the question correctly.

11. Apart from the above, all students had the similar advantage/disadvantage and if the principles, as referred to hereinabove are taken into consideration, it cannot be said that any discriminatory treatment would be meted out by the students of English medium against the Gujarati medium students. Since in substance, the requisite answer would be common to both the category of students.

12. Apart from the above, there is no other material available on record before this Court to show that the immuno deficiency disease is an independent chapter.

The reliance placed upon the book of Biological Darpan by Kumar cannot be accepted on the face of the apparent inclusion of Immuno Deficiency disease under the head of Immunological Disorder as sought to be canvassed on behalf of the petitioner.

13. In view of the above, no case is made out for interference and hence, rejected.