

(2018) 05 DEL CK 0235
In the Delhi High Court
Case No : LPA 289, 290 OF 2018

CENTRAL BOARD OF SECONDARY EDUCATION	APPELLANT
Vs	
MEENAKSHI SHARMA & ANR	RESPONDENT

Date of Decision : 18-05-2018

Acts Referred:

Citation : (2018) 05 DEL CK 0235

Hon'ble Judges : S. RAVINDRA BHAT;A. K. CHAWLA

Bench : Division Bench

Advocate : Amit Bansal, Seema Dolo, Aakanksha Kaul, Arjun Mitra, Jaskaran Kaur

Final Decision : Allowed

Judgement

S. RAVINDRA BHAT, J.

% C.M.No.20888/2018 (for exemption) C.M.Nos.20941-20942/2018 (for exemption) Allowed, subject to all just exceptions. PA 289/2018 and

C.M.No.20887/2018 (stay) LPA 290/2018 and C.M.No.20940/2018 (stay)

The Central Board of Secondary Education (CBSE) and Joint Entrance Examination (JEE), 2018 have appealed against the interim order of the

learned Single Judge, permitting the respondents/writ petitioners to appear in the JEE (Advanced) Examination-2018 to be held for 2018 on

20.05.2018.

The factual background is that the Joint Entrance Examinations is an all India procedure for the year 2018 examination, for which the process began

on 01.01.2018 with the publication of the brochure, which indicated that the eligible candidates were to apply. The first part of the examinations i.e. the

JEE (Mains) is an objective type test; it was concededly held on 08.04.2018.

According to the time-line, the answer keys to the examination choice of question were published on 24.04.2018; any candidate who wished to object to the correctness of the answer keys could do so after following the procedure in the format provided for that purpose for three days upto 27.04.2018. Here again, it is not in dispute that the writ petitioner did object to the answer keys and model answers so far as four answer keys were concerned in the Physics and Chemistry section of the examination. Apparently, two Member technical expert team for the concerned questions for each subject examined the objections and dealt with them based on which they were either accepted or not accepted. The final answer keys were uploaded on 30.04.2018. Again, undisputedly, the writ petitioner's objections were not accepted. She approached the Court in this background by filing W.P. (C) No.4749/2018. This writ petition was permitted to be withdrawn on 04.05.2018 when it was pointed out that the final answer keys were in the public domain. The writ petitioner stated that she would challenge the marks awarded in respect of her answers. Accordingly, she filed the present W.P. (C) No.5157/2018.

After noticing the respondent, who appeared on advance notice at the first hearing, learned Single Judge, based upon the petitioner's assertions, taking into consideration the petitioner's contention that according to the expert advice received by her the award of marks in respect of four choices of questions in her case was incorrect, directed that she be permitted to participate in JEE (Advanced) Examination, 2018 scheduled on 20.05.2018. The relevant part of the impugned order reads as follows :

“ I have heard learned counsel for the parties and have considered their rival contentions. The record shows that the petitioner is a meritorious student having obtained 95% in her Class XII CBSE exams held in 2017. Having examined the opinion of various experts relied upon by the petitioner, I find that the petitioner has been able to make out a prima facie case and grave and irreparable prejudice would be caused to her in case she is precluded from appearing in the JEE Advanced exams slated to be held on 20th May, 2018.

Since the petitioner had approached this Court by way of a writ petition before the cut-off date and was permitted to withdraw the said writ petition only to challenge the revised answer key declared by respondent no.1 on 30th

April, 2018, I see no reason to decline permission to the petitioner to appear in the JEE Advanced Exam only because she was not allowed to submit the online form before 7th May, 2018. In my opinion, the petitioner ought to be permitted to appear in the JEE Advanced Exam by submitting a hard copy of the form to respondent no.2.

The petitioner is accordingly permitted to fill up a hard copy of the form personally and approach the respondent no.2 for this purpose within one day with a copy of this order. Upon receipt of her application form, respondent no.2 is directed to permit the petitioner to appear in the JEE Advanced

Exam. The respondents shall ensure that all steps are taken to permit the petitioner to appear in the said exam. The permission to the petitioner to appear in the Exam would be subject to the outcome of the present petition.

It is made clear that merely because the petitioner is permitted to appear in the examination, no special equities will be created in her favour.â??

The CBSE and JEE, the appellants before this Court urge that the learned Single Judge could not have directed on the mere assumption that another

view, which did not accord or rather conflicted with the final examination keys published in this case, could be taken at the final stage of hearing. It is

submitted that such interim orders cannot be resorted to. The appellants relied upon the judgment of the Supreme Court in *Regional Officer, CBSE v.*

Ku. Sheena Peethambaran and Ors., (2003) 7 SCC 719, *CBSE v. P. Kumar*, 1989 5 SCC 377 and *Gurunanakdev University v. Parminder Kr. Bansal*

& *Anr*, 1993 4 SCC 401.

Counsel for the writ petitioner/respondent on the other hand contended that where apparent and palpable error appear on the face of the record, the

Courts are not hesitant to discard the final examinations keys and direct either the re-examination or carry out an exercise by revising the result.

Particularly, the recent judgment of the Supreme Court in *Richal and Ors. v. Rajasthan Public Service Commission and Ors.*(CA 4695-99 of 2018

decided on 03.05.2018), has been cited. It is also stated that this judgment cannot be distinguished mainly on the ground that it relates to employment

because the previous ruling in *Kanpur University v. Samir Gupta*, 1987 4 SCC 309 is relied thereunder. It is submitted that if this Court intervenes, the

writ petitioner would be irreparably prejudiced inasmuch as, the proceedings which are scheduled to be taken up on 30.05.2018 before the Single

Judge would be rendered infructuous.

It is apparent from the discussion that what the Single Judge has done is to direct the respondent/writ petitioner to participate in the final test process

i.e. JEE (Advanced) Exemption, 2018 scheduled for 20.05.2018. What persuaded the learned Single Judge to do so clearly is the assertions on behalf

of the writ petitioner that the expert report relied upon by her indicated that the answer keys were inaccurate. The Supreme Court has been, in this

Court's opinion, categorical with respect to the approach to be adopted for the administration of such interlocutory remedies, when it stated in

Guru Nanak Dev University vs. Parminder Kr. Bansal & Anr., (1993) 4 SCC 401 as follows:-

“We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to

anyone. From the series of orders that keep coming before us in academic matters, we find that loose, illconceived sympathy masquerades as

interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or

whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates.

Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might

ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate

assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The Courts should not embarrass academic authorities by

itself taking over their functions.”

The writ petitioner no doubt cited Richal (supra) - which finds mention in the impugned order as well apart from the fact that the said decision dealt

with the recruitment procedure which involved the appointment of 13000 teachers, what can also be noticed is that in the said case expert committee

had been appointed, which the Court discerned, had not correctly gone into all aspects. Furthermore, the Court did not have any occasion to deal with

the scientific or technical questions of the kind which have ensued in the present case. Crucially, the expert committee, which evaluated the objections

to two key answers, first published on 24.04.2018, were highly accomplished and

are Professors in IITs. Arguendo, if, the interlocutory or interim proceedings in the writ court could displace such opinion, clearly, the expert opinion, which was presented before the Court ought to be of such weight and character as to completely displace the view of the independent experts, who have evaluated the objections in this case. There is no such reflection of merits of the expert's opinion relied upon by the writ petitioner that it was of such high standard as to resolve the controversy in a near conclusive manner. The four questions undoubtedly pertain to the scientific domain.

Having regard to all these circumstances, we are of the opinion that the impugned order cannot be sustained. It is accordingly set aside.

The appeals are allowed in the above terms. All the pending application(s) also stand disposed off. Order dasti.