

(1997) 02 DEL CK 0081

In the Delhi High Court

Case No : Letters Patent Appeal No's. 194 and 201 of 1996

Central Board of Secondary Education

APPELLANT

Vs

Ms. Manisha Surana and Another

RESPONDENT

Date of Decision : 04-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1998 Delhi 406

Hon'ble Judges : M. Jagannadha Rao, C.J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Anil Kumar, for the Appellant; Gita Mittal, Arti Bansal for Respondent 1, Vikas Singh and Yunus Malik for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Sarin, J.—Admit.

Two Letter Patent Appeals bearing Nos. 194/96 and 201/96, have been preferred against the judgment dated 2-8-1996 of the learned Single Judge in the Civil Writ Petition No. 2545/96 titled Manisha Surana v. Central Board of Secondary Education and Another. LPA 194/96 has been preferred by the Central Board of Secondary Education (hereinafter referred to as the "Board"); while LPA. 201/96 has been preferred by the Manipal Academy of Higher Education (hereinafter referred to as the "Manipal Academy"). This common judgment would dispose of both the appeals.

2. Respondent No. 1, Manisha Surana had appeared for the Under Graduate Entrance Test (UGET) conducted by the Board on behalf of the Manipal Academy for a seat in the Medical and Dental Colleges. Unfortunately, Manisha Surana omitted to fill in the test booklet code in her answer sheet, as a result, of which the Board declined to evaluate her answer sheet. She filed Civil Writ Petition No. 2545/96 seeking directions for the Board to evaluate her answer sheet after putting the test booklet code and to declare her result Along with the other

successful candidates. A further direction was sought for grant of admission in the Manipal Academy in accordance with the merit rank to be secured by her.

3. The learned Single Judge in the impugned judgment held that the omission to fill in the test booklet code was an innocent one without any ulterior motive. The learned Single Judge further held that apart from Manisha's omission in not filling the Test Booklet Code, the Invigilator, entrusted with the duty to ensure that candidates filled in all the details and particulars, failed in his duty in not checking the answer sheet and guiding her. The Board could not be absolved of the responsibility due to the lapse of its Invigilator. The learned Single Judge held that the candidate should not suffer on account of her minor omission and the lapse of the Invigilator and in the facts and circumstances of the case, she was entitled to the relief as prayed. The learned Single Judge, accordingly, allowed the petition and directed the respondent Board to evaluate the answer sheet of the petitioner and declare her result within one month from 2-8-1996, i.e. the date of the judgment.

4. Aggrieved by the aforesaid judgment of the learned Single Judge the Board and the Manipal Academy have preferred these appeals.

5. For a proper appreciation of the requirement of filling the Test Booklet Code and the consequences flowing from not filling it, we may notice certain facets of the competitive entrance examination that was conducted by the Board. The competitive examination was held on 30-6-1996 for entrance to the seats for Medical and Dental Colleges. In the examination, a question booklet containing 200 questions was given. Every question booklet had a Test Booklet Code. The answer sheet was separate, though given in the same question booklet. The significance of the Test Booklet Code was to identify the question booklet attempted by a candidate. The different question booklets contained same questions but in a changed order. This was being done to minimize the chances of copying in the objective questions that were being put. The answer sheet had two sides. On one side, the roll number and other details were to be filled up by the candidate and it was to be signed by the candidate and the Invigilator. The other side of the answer sheet was to be filled in by pencil by darkening the circle for the answer chosen. Test Booklet Code was to be marked on this side Along with answers to the question. The process of evaluation of results is computerized and the answer sheet is put through the scanner, wherein the key answers are fed according to the Test Booklet Code. The answer sheet could be evaluated correctly by the optical scanner only if the Test Booklet Code was correctly indicated in the answer sheet.

6. From the date of inviting applications in the first week of March 1996, till the date of examination, i.e. 30th June, 1996, there was a rigid time schedule for submission of applications, dispatch of admission cards, etc. The result of the examination was to be processed and completed by the appellant Board by 12-7-1996 and the Manipal Academy was to declare the result by 20-7-1996. Counselling was to commence at Manipal Academy from 8-8-1996 to 12-8-1996.

Classes were to commence from 14-8-1996. The total number of students, who took the entrance examination was 8364, while the total number of candidates whose answer sheets were evaluated were 8030.

7. Manipal Academy had issued a comprehensive prospectus for the year 1996-97, giving complete instructions and details with regard to application form as the procedure with regard to issue of admission cards was given. The said prospectus gave a detailed description of "The answer sheet" and complete instructions regarding filling up of the same. As regards Test Booklet Code in the answer sheet the following instruction was given :

"Side II:

This side of the answer sheet contains the following columns which are to be written/filled up with HB pencil only. A specimen copy of the answer sheet is provided in Annexure II.

Test Booklet Code -- Each booklet has been assigned a Code. Note this Code and darken the appropriate circle."

This was illustrated in the sample answer sheet. The Test Booklet Code was given as "A", "B", "C and "D", one of which was required to be circled. It provided, a very clear demonstration of how to fill in the Test Booklet Code :

"If your Test Booklet Code is "B", please fill in as below"

* * * * The said page of the sample answer sheet also carried an endorsement:

"Signature of the Invigilator"

(Please check Roll No. and Test Booklet Code as filled in by the Candidate on Side 2).

The prospectus, in Clause 40, provided as under:

"Booklet Code as filled up by the candidate in the answer sheet on side 2 will be accepted as final for the purpose of evaluation. When the Booklet Code is left blank or more than one booklet code is indicated on the answer sheet, it will be deemed as incorrect booklet Code and answer sheet will not be evaluated."

8. The sample Test Booklet used for the UGET examination on the first page contained Instruction 9 as under:

"The Code for this Book is "D". Please do not forget to write this on the answer sheet. If the Code is not written the answer sheet shall not be assessed."

We may also notice at this stage that the case of the appellants before us is that though the Sample answer sheet in the prospectus required the Invigilator to check the roll number and Test Booklet Code, as filled up by the candidate on Side 2, the actual answer sheets did not carry such an endorsement.

9. Having noticed the essential facets of the examination to be conducted by the

Board as well as the reasons for requirement to give the Test Booklet Code number, let us summarize the case of the respondent before the learned Single Judge :

- a) The respondent could not comprehend the Test Booklet Code and had requested the Invigilator present to check the answer sheet and ensure completion of all necessary formalities. Respondent claimed that she had specifically requested and inquired about the Test Booklet Code, which she had not been able to comprehend and had not marked as it was not clear to her.
- b) The Invigilator, according to the respondent examined and checked the answer sheet and informed her that it was filled up as per requirement. The omission to fill in the Test Booklet Code was a technical and minor omission and it could be made good because of all other details that had been given.
- c) Duty was cast upon the Invigilator to check the Booklet Code and there was lapse on his part, which was of far more gravity, than the omission of respondent.
- d) The respondent assailed condition No. 40, debarring evaluation of answer sheets where Booklet Code was not given as harsh and arbitrary. It is contended that there were enough details and materials to Co-relate and identify the Test Booklet attempted with the answer sheet.

The learned Single Judge, as noticed earlier, had accepted the contentions of the respondent allowed the writ petition and directed the evaluation of the answer sheet of respondent and her result to be declared within a month.

10. The appeals had come up for admission before the Bench on 29-8-1996 when notice was directed to be issued for 13-9-1996. The appellant was also directed to evaluate the answer sheets in accordance with all the four booklet codes and place the result before the Court in a sealed cover and also to give the position of the respondent in the merit list. Pursuant to the directions given on 29-8-1996 the evaluation of the answer sheets of respondent No. 1 had been made in accordance with the best booklet codes. The respondent gets the rank next to 517, which may be described as 517-A, based on the Booklet Code "B". If other Booklet Codes are taken, her rank goes down beyond 1295.

11. As regards admissions to MBBS Course in Manipal Academy, candidates up to 584 in the merit list were accommodated and the wait list was up to 635. As regards the Dental Course, candidates up to 976 in the merit list were accommodated and candidates up to 984 on the merit list were wait listed. Additional Affidavit dated 27-9-1996 has been filed by the Controller of Examinations of the Board giving the above details.

12. It would, Therefore, be seen that the respondent based on the evaluation of her answer sheet, would make the grade on merits for admission to both the Medical and Dental Courses, but for her default in not filling up the Test Booklet Code, which, according to the appellants, disqualified her, leading to her result not being declared.

13. We may also, at this stage, notice that the appellants have informed us that apart from the answer sheet of the respondent the remaining 333 answer sheets of either similarly situated candidates who had not filled in the Test Booklet Code or those who had given more than one code have also been got evaluated. As a result thereof, 10 candidates have been found to get a rank higher than the one obtained by the respondent in the merit list.

14. Counsel for the parties were heard at length and vide orders dated 16-10-1996, the order of the learned single Judge was suspended. It was further ordered that the evaluation or publication of the result of the respondent/writ petitioner and other candidates, subsequent to the filing of the appeals and pursuant to the directions given in the appeals, will also be of no effect.

15. Let us consider the challenge to the validity of the conditions debarring evaluation of answer sheet in the absence of the Test Booklet Code. Clause 40 of the prospectus and Instructions No. 9 of the answer sheet clearly stipulated that non-furnishing of the Test Booklet Code would result in non-evaluation of the answer sheet. Detailed instructions had been given with regard to filling up of the Test Booklet Code. We have already noticed the essential facets of the entrance examination conducted, the objective nature of the question, the aspect of negative marking as well as the severe time constraints within which the entire selection process had to be completed, based on a computerized system. In the absence of the Test Booklet Code, the optical scanner would not accept the answer sheet for processing and evaluation. The necessity of having multiple question booklet to minimize and eradicate, to the extent possible, the unfair practice of copying cannot be understood. Clause 40 provides a reasonable classification between those who fill in the Test Booklet Code correctly and another group who does not fill it. Besides, considering the object sought to be achieved, the requirement for filling up the Test Booklet Code has a nexus thereto. If the Test Booklet Code was not available, manual checking of the answer sheets, would take a long time, which would frustrate the time bound selection process itself. This is especially so having regard to the large number of candidates whose results had to be processed. Accordingly, Clause 40, in our view, is intra vires and liable to be upheld.

16. The second is the factual aspects of not filling up of the Test Booklet Code in the instant case. The same has been found by the learned single Judge to be a minor lapse of the respondent without any ulterior motive and without any attempt any unfair means. The learned single Judge also held that the Invigilator, who was the representative of the Board, had failed in his duty in not checking the answer sheet and ensuring that all particulars were filled up. The case of the respondent/writ petitioner in the writ petition was that she had specifically requested and inquired about the Test Booklet Code from the Invigilator, as she had not been able to comprehend the same. The Invigilator had examined and checked the answer sheet and informed her that it was filled as per requirement.

17. It would be useful to reproduce and extract from the letter addressed by the

respondent to the Deputy Secretary of the Board, which appears at page 74 of the paper book in LPA. 194/96 :

"When I came back from the examination hall. I could know that I could not encircle by pencil the Test Booklet Code provided in the side II of the answer sheet. Although I filled my Roll No. Test Booklet No. and all other necessary particulars wanted in that sheet, including my name. I asked the Invigilator of the examination hall to check my answer sheet to examine that all the necessary formalities have been completed. I also insisted and enquired about the Test Booklet Code, which I missed to mark in that matter. Again and again I sought guidance from the Invigilator, who examined and checked my answer sheet and informed me that everything is all right. But when I came out of the examination hall, I realised that I have missed something to mark in the Text Booklet Code column of the answer sheet. Now I have come to know that by not marking the Test Booklet Code, my answer sheet will not be evaluated.

I may mention that I have solved all the 200 questions given in the paper and I expect my rank to be No. 1 in this UGET-96."

18. It was argued that respondent's entire career was at stake and she should not be made to suffer on account of this technical lapse, especially when the major lapse was that of the Invigilator. It was submitted that non-evaluation of the answer sheet of the respondent for not filling up the Test Booklet Code would be unduly harsh, illegal and arbitrary. The penalty was totally disproportionate to the error attributed to the respondent.

19. Learned counsel for the appellants produced before us a Certificate from the Invigilator to the effect that no such query was ever raised by the respondent from him and that he had no occasion to hold out any assurance or tell the respondent that her form had been adequately filled. Besides, the appellants have submitted that though the specimen form attached to the prospectus did carry the endorsement requiring the Invigilator to check the Test Booklet Code, the form actually issued did not have any such endorsement. We find, on perusal of the form, that detailed instructions had been given for filling up of the Test Booklet Code. The consequences which, would entail as a result of the not filling up the test Booklet Code were also clearly spelt out. The filling up of the Test Booklet Code had even been demonstrated. We have examined the original answer sheet which has been produced before us.

The said answer sheet clearly carries the example of how to fill up the Test Booklet Code on the reverse side which is fairly simple. It also does not carry the endorsement requiring the Invigilator to check the same. We also find as improbable, the version now advanced by the respondent that she could not comprehend how to fill up the Test Booklet Code. This is especially so since she had appeared in the pre-medical examination held hardly a fortnight before the present one on 12-5-1996 and had filled up her Test Booklet Code in the same fashion. We also find it rather incredible that she had specifically and repeatedly

questioned the Invigilator regarding filling up of the Test Booklet Code and that the Invigilator had examined her answer sheet and informed her that everything was alright. The filling up of the Test Booklet Code was a simple matter which the respondent had done as close as on 12-5-1996. We find this to be a case where the respondent simply omitted to fill up the Test Booklet Code.

20. Learned counsel for the respondent next argued that in any case since the results have now been got evaluated, pursuant to the directions of this Court, the Academy should admit the respondent who has been found to be eligible, based on merit. Learned counsel for the respondent also argued that this is especially so since the Board itself had been directed, as far back as 2-8-1996, to evaluate and declare the result and the Board had dithered on the same and preferred this appeal virtually when the time period of one month, directed by the Court, was to expire. Learned counsel submitted that the appellants had been acting in a manner so as to frustrate the order passed by the learned single Judge and to jeopardise the rights of the respondent. She further submitted that the appellants and respondent No. 2 could not be permitted to take advantage of any acts done by them during the pendency of the writ petition or those after the pronouncement of the judgment and no candidate, so admitted, could claim any right or special equity over the respondent. Accordingly, the rights of third persons, so admitted, would not be of any consequence.

21. We are unable to accept the submissions of learned counsel for the respondent. The admissions to the Medical and Dental courses have since been completed. It is also well settled that in case the respondent is to be accommodated then not only the respondent but all those candidates who had also not either filled up the Test Booklet Code or filled up more than one Test Booklet Code, would be entitled to revaluation. Based on the evaluation of the results of such 334 candidates, 10 students are admittedly found to be above the respondent. These students are not before the Court. Besides, academic session has already commenced and admissions being granted to the respondent and/or 10 other students who are above her, would entail displacement of students who are already undergoing the course for no fault of theirs. Besides, there may be cases of students who may be below the respondent but may fall in the merit list up to 584, since the Board had only indicated to the Court the results of students who were above the respondent in merit list. This apart, the answer sheets have been evaluated on the basis of best of four codes which may not be even accurate as the probability of candidates securing more or less on the basis of actual Test Booklet Code cannot be completely ruled out.

22. It is now well-settled that the measure for admissions is academic excellence and not litigative persistence. The admissions are to be strictly in accordance with merit measured by marks secured. Reference may be made to State of Kerala Vs. Kumari T.P. Roshana and Another, The Apex Court again in Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, rejected the submission that the writ petitioners should be preferred for

admission irrespective of merit over those who did not file writ petitions. The Apex Court held that those higher up in the merit list could not be ignored simply because the candidate did not file the writ petition. In the Full Bench decision of this Court in *Sandhya Kabra and Others Vs. University of Delhi*, it was observed as under :

".....Admission to PG course is made on the basis of a competitive examination and when merit is the criteria for granting admission, it must stand to reason irrespective of the fact as to who approaches the Court if any seat has to be filled then, all things being equal, merit must prevail."

23. Again in a recent case, *Dr Santosh Kumari (Mrs) Vs. Union of India (UOI) and Others*, , the Apex Court did not accept the plea that a candidate who had approached the Court at the earliest moment should be admitted. Reliance was even placed on the case *Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others*, , which concerned appointments to the post of Assistant Engineers (Civil and Mechanical), The allocation of marks of 50 per cent for interview was assailed as being violative of the rules. The Apex Court upheld the contention of the writ petitioner holding that provision for 15 per cent marks ought to be for interview. The Apex Court did not consider cases of those who did not approach the Court for redress of their grievance. This was because the appointments had been made in 1987 and a period of five years had elapsed. Reliance on this case was specifically rejected by the Apex Court in *Santosh Kumari's* case, holding :

"It is not possible to agree. The allotment of seats should go according to merit. It does not depend on who comes to Court and who does not. The matter is one of principle and should not depend upon who comes to the Court. A more deserving candidate may not have the means to approach the Court."

24. Keeping in view the above legal principles, in case the respondent is permitted to have her answer sheets evaluated and processed for admission then cases of all those candidates, numbering 333, whose answer sheets have not been evaluated, either because of non-mentioning of the Test Booklet Code or mentioning of more than one Test Booklet Code, will have to be evaluated and considered for the purpose of admission, Opportunities to students figuring above the respondent in the merit list will have to be given. Besides, those below the respondent in the merit list but above the last eligible candidate in the merit list, would also have to be considered. This would result in displacement of students who are already admitted and undergoing the course. It goes without saying that 10 students who ranked higher in merit than the respondent in case answer sheets without the Test Booklet Code are to be evaluated and processed are not before us. Besides, none of the students who have been admitted and who would get displaced in case results of students such as the respondent and others similarly placed students are evaluated and processed, have been impugned or given notice. The said students have not been impugned here and it would not be open to cancel their admissions without notice and without hearing

them. Reliance in this connection may be placed on the case *Aarti Gupta and Others Vs. State of Punjab and Others*, wherein the Apex Court observed as under (at Page 484; of AIR):

"It is a fact that 68 candidates are not before us as they have not been impleaded. It would not be open for us to cancel their admissions behind their back nor would it be possible to require the State Government to create additional seats to accommodate them."

Learned counsel for the Manipal Academy has submitted that five vacancies in the Medical Course and one in the Dental Course as on 30-9-1996 are to be filled up from the waiting list published.

25. While one can have all the concern and compassion for the respondent and visualize her despair, yet allowing the writ petition would amount to negation of the rules that are meant to be strictly enforced and of which the respondent had clear notice. The respondent thus, does not have any enforceable legal right. Besides, any accommodation of the respondent as noticed earlier, would result in disruption of the admission process that is concluded and displacement of students who are admitted and are undergoing the course.

26. In view of the foregoing discussion, we are unable to sustain the direction of the learned single Judge for evaluation of the answer sheet of the respondent and to grant her consequential reliefs, as sought. The appeals are allowed and Civil Writ Petition No. 2545 of 1996 is dismissed.