
(2000) 03 KL CK 0039

In the High Court Of Kerala

Case No : O P. No's. 2216, 18466, 20019 and 20221, etc. of 1999

Dr. B.K. Madhumohan and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 30-03-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2000) 03 KL CK 0039

Hon'ble Judges : M.R. Hariharan Nair, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Kurian George Kannanthanam and Thomas George, for the Appellant; Government Pleader, for the Respondent

Judgement

K.S. Radhakrishnan, J.—We may, at the outset, express our deep anguish and concern at the insensitive and obdurate manner in which the Common Entrance Examination was conducted in Kerala in the year 1999.

2. Government of Kerala, as per various orders, authorised the Commissioner for Entrance Examinations to prepare and publish a common prospectus for admission to the professional degree courses. Accordingly, a prospectus was published from the office of the Commissioner for Entrance Examinations for the year 1999. Prospectus stipulated that the examination would be of objective in nature and based on single response and the candidate would have to select and mark the answer in the appropriate space in the answer sheet. Question paper for all the subjects would be in the form of question-booklet and the answer sheet would be given separately. Prospectus also provided for negative mark. Prospectus says that if any candidate has any genuine complaint regarding the conduct of the examination, he/she may register his/her complaint before the Chief Superintendent of the Examination Centre with supporting details/information immediately after the particular Examination Session is over. A fully computerised system was also adopted for the evaluation of the answer scripts, using the Optical Mark Reading System (O.M.R.) and for the preparation of the

rank lists. Prospectus also stipulated that there is no provision for re-checking or revaluation of the answer scripts as the valuation or scoring would be error free. The mode of preparation of the rank list was also enumerated in the prospectus which was valid till 31st December 1999.

3. Commissioner for Entrance Examinations conducted the Entrance Examination for Medicine/Engineering Courses and other allied courses on 11th, 12th and 13th of June, 1999. After the Common Entrance Examination was over some of the candidates submitted representations before the Commissioner stating that questions of Physics and Mathematics papers did not have correct answers in the choices given. Commissioner examined those complaints and referred the matter to the Professors who set the question papers. Professor in Physics and Mathematics who had set the question papers informed the Commissioner that there were three questions in Physics paper without correct answer among the given choices and one question in Mathematics paper, without correct answer among the given choices which shows that Answers in Answer Key were wrong. Accordingly, Commissioner deleted three questions from Physics question paper and valued the same only for 117 questions instead of 120. So also one question was deleted from the Mathematics question paper and valuation was done only in respect of 119 questions instead of 120 questions.

4. The Commissioner for Entrance Examinations then published the rank list which showed the marks of certain candidates in decimals. If all the 120 questions in the question booklet were correct there would not be any possibility of having decimal marks. This gave rise to suspicion in the minds of some of the students and they approached this Court challenging the very system of Entrance Examination itself. They also wanted this Court to re-check and revalue their answer sheets. Some of them wanted to conduct a fresh entrance test for Engineering Medicine, etc. This Court, therefore, called for the question papers of some of the Petitioners in all the subjects and also the Answer Keys prepared and permitted the Petitioners to scrutinise the same by experts in the subjects to ascertain whether there were mistakes in other questions as well. Experts pointed out several mistakes in the questions as well as the answers given in the Answer Keys.

5. Report submitted by the Experts on the side of the Petitioners was made available to the Commissioner for further scrutiny. Commissioner, in turn, took up the matter with the Professors who set the question papers and also the Answer Keys. Commissioner later filed an affidavit before this Court on 31st August 1999 after subjecting the question papers to further scrutiny by the Professors who set the question papers and the Answer Keys. Paper setters admitted that there were further mistakes in some more questions as pointed out by the experts on the side of Petitioners in various subjects. Commissioner described such revelation as "shocking".

6. The question setters had earlier stated that there were only three mistakes in Physics question paper, that is, in question Nos. 27, 53 and 115. But, in the

affidavit filed on 31st August 1999 it was stated that question Nos. 56, 102 and 108 in Physics are also to be deleted from the Physics question paper. Answer given for question No. 13 in the Answer Key. it was pointed out, has to be revalued with "C" as the correct answer Instead of "A" which was originally given as the correct answer in the Answer Key. In the case of Mathematics also the Commissioner for Entrance Examinations had earlier deleted question No. 81 after consulting the question setters. In the additional affidavit it was stated that over and above question "No. 81, question Nos. 18, 43, 59, 79, 66 and 85 have also to be deleted since no correct answers have been given in the question booklet. In the affidavit it is also stated that question Nos. 64 and 112 have to be revalued with answer "A" and "B" and "B" and "C" respectively since they had more than one correct answer. Question No. 78 was requested to be revalued With answer "D" instead of "C" which was given in the Answer Key. This would indicate that for certain questions the answers given in Answer Key itself were wrong. This is admitted by the question setters themselves. In other words, it was on the basis of the wrong Answer Key that rank list was prepared and published.

7. Commissioner also got examined questions and answers by the question setters in Chemistry as well. They opined that question No. 7 in the Chemistry paper has to be deleted. The affidavit also stated that the answers given in the Answer Key for question No. 60 Was wrong and that it is to be revalued with "B" as correct answer So also for question No. 119 the answer given in Answer Key was wrong and it is to be revalued with "C". With regard to the Biology Question the Commissioner stated in the affidavit, after getting it examined by the question setters, that question No. 12 and 27 are to be deleted. In other words, the Commissioner after having examined the matter through respective question setters has stated in the affidavit that six questions are to be deleted front Physics, one from Chemistry, seven from Mathematics and two from Biology, thus totalling to 16. These questions were requested to be deleted from all the subjects put together either because there were mistakes in the questions or correct choices were not given in the question booklet or the question was controversial. This is the view expressed by the very question/answer setters themselves.

8. The above facts would depict a very sorry state of affairs. After the examination was over the question setters themselves admitted that several questions had to be deleted either due to the mistake in the questions put or there was no correct choice in the question baoklet or the questions were controversial. In other wards, the question setters and Commissioner have admitted that the rank list was prepared on the basis of incorrect Answer Keys, which would evidently shake the very foundation of the examination itself. They also admitted that some of the answers given in Answer Key itself were wrong that certain questions carry more than one most appropriate response. Under the above-mentioned circumstances, the Commissioner himself requested the Court to pass appropriate orders to recast the rank list in Order to do justice to the

students who took the examination.

9. This Court then perused the question booklet, Answer Keys and some of the O.M.R. data sheet and also examined the reports of the experts submitted by the Petitioners and also the affidavit filed by the Commissioner. This Court noticed that the situation was grave and rather unprecedented. The question setters themselves had admitted after the examination was over that several questions were to be deleted from the question booklet itself and that some of the answers given in the Answer Keys were wrong. It was noticed that in some questions more than one appropriate answers would be possible depending upon the nature of the questions put. Counsel for the Petitioners during the course of hearing submitted that the instances pointed out by them, through the Professors, are only few and that there are very many mistakes in the question, booklet as well as Answer Key. According to them, the Commissioner referred only certain questions pointed out by them to the question setters.

10. This Court felt that in order to set right the entire controversy and to restore the credibility to the examination system the entire questions and answers should be subjected to scrutiny by expert panel in various subjects. An order was passed to that effect on 31st August 1999. Considering the importance of the matter a Division Bench was constituted to go into the entire aspects and matter was heard.

11. The Commissioner as well as some of the Petitioners submitted their respective panels. Court accepted the panel submitted by the Commissioner in a sealed cover consisting of eminent Professors in their respective subject. This Court passed an order on 5th September 1999 directing the panel suggested by the Commissioner to prepare Answer Keys accordingly for the correct questions in all the subjects. They were also directed to delete the questions for which correct answers were not provided in the question booklet. If more than one correct answer is provided in the question booklet the panel was directed to include all the correct answers in the Answer Keys.

12. As directed by this Court the panel scrutinised the question booklets in all the subjects and prepared fresh Answer Keys. The panel suggested deletion of seven questions from Mathematics question booklet. Besides, for Mathematics three questions carried more than one answer and for three questions answer given in the Answer Key was wrong. In the case of Physics, the panel unanimously suggested deletion of 11 questions and found seven other questions to carry more than one correct answer. The panel also stated that for two questions correct answer was not given in the Answer Key and they are to be substituted with the correct answers from the question booklet. In the case of Chemistry the panel suggested deletion of two questions. Panel stated that for four questions there is more than one correct answer and for three questions the answer given in the Answer Key was wrong and liable to be replaced with correct answer. In the case of Biology (Botany part) the panel suggested deletion of two questions. Incidentally those were the questions directed to be deleted by the question

setters themselves Panel also stated that seven other questions carry more than correct answer In the case of Zoology, panel suggested deletion of two questions and found that four questions carry more than one answer In other words, the question setters as well as the panel are in agreement for deletion of some of the questions since no correct answers were given in the question booklet. It was also noticed that for some of the questions there were more than one correct answer. The members of the panel appointed by this Court for various subjects were unanimous in their opinion.

13. We heard Sri Kurian George Kannanthanam on behalf of some of the Petitioners, Senior Counsel Sri T.P. Kulu Nambiar on behalf of some of the students holding higher rank in the rank list and also Counsel Sri S.A. Razack, Sri Bechu Kurian Thomas, Sri O.V. Radhakrishnan, etc. We also heard the arguments advanced by learned Advocate General and Sri K. Jayakumar, learned Senior Government Pleader and Sri. Santhosh Mathew, Counsel for the Calicut Regional Engineering College.

14. Counsel appearing for some of the students who were already included in the original rank list submitted that there is no justification in disturbing their position since all the students were subjected to some advantage or disadvantage. Counsel submitted many of the students included in the rank list have given up their admissions in various other reputed colleges and institutions on receipt of admission cards. Counsel submitted in any view, if the rank list is directed to be recast, relief may be granted to the Petitioners without disturbing the rank holders in the Original list.

15. Learned Counsel appearing for some of the contesting Respondents submitted that the Writ Petitions are not maintainable since no writ of certiorari would lie against the action of the Commissioner which is essentially administrative in nature. Counsel relied on a decision of the Supreme Court in *Province of Bombay Vs. Kusaldas S. Advani and Others*, . Reference was also made to the decision of the Supreme Court in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, and some later decisions.

16. Counsel appearing for some of the Petitioners took up the stand that since it was found that the answers given in the Answer Key itself were wrong as admitted by the Commissioner as well as the question setters, the rank list has lost its substratum and if such a rank list is relied on it would cause great injustice to the examinees. Counsel pointed out that those students who have correctly given the answers were not only not given marks for certain questions but were given negative marks, since Answer Keys were wrong. Counsel pointed out that this is a case where several mistakes have been found out not only by the experts but by the question setters themselves after the examination was over, and hence interests of justice demand recast of the rank list.

17. We noticed in this case the Commissioner himself wanted this Court to recast the rank list after having convinced himself that many of the questions as well as the

answers given in the Answer Key were, wrong as confirmed by the question setters themselves. If such an illegally prepared rank list is relied upon to determine the fate of thousands of candidates that would be a great injustice to them. Position we get in this case is that many of the candidates who have written correct answers have not only lost four marks but was also awarded negative marks due to the mistakes committed in the Answer Key by the Question/Answer Setters themselves. This is admitted by the Commissioner himself after getting it confirmed from the Question Setters.

18. Supreme Court as well as various High Courts had occasion to deal with similar situation and noted that the mistake committed in the question, booklet as well as preparation of answer key would have far reaching consequences in Common Entrance Examinations. Supreme Court in Kanpur University and Others Vs. Samir Gupta and Others, held as follows:

The findings of the High Court raise a question of great importance to the student community. Normally, one would be inclined to the view, especially if one has been a paper-setter and an examiner, that the key answer furnished by the paper-setter and accepted by the University as correct, should not be allowed to be challenged. One way of achieving it is not to publish the key answer at all. If the University had not published the key answer along with the result of the Test, no controversy would have been arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answers were kept secret in this case, the remedy would have been worse than the disease, because, so many students would have had to suffer the injustice in silence. The publication of the key answer has unravelled an unhappy state of affairs to which University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system.

In the above-mentioned case Supreme Court found that mistakes have been committed in the Answer Key. The Court found that the answer given in the key was wrong and the answer suggested by the students was the correct one and held they were entitled to get marks. The finding of the High Court was confirmed by the Supreme Court.

19. In Indian Council and Enviro-Legal Action Vs. Union of India and others, a similar situation arose. The Orissa High Court allowed the Writ Petition and directed revaluation of the answer scripts of all the candidates who were likely either to be affected or benefited by the revaluation of the answer scripts on the basis of the correct key answers as recorded by the Expert Committee. In that case eight key answers were found to be wrong. The finding of the High Court was confirmed by the Supreme Court. Chalamalasetty Satyendra Kumar and others Vs. Government of A.P. and others, was a case where 38 questions were found to be wrong and Court directed deletion of 38 questions and directed the

examiners to judge the proficiency of candidates on the basis of answers given for 162 questions.

20. We are of the view that since the answers given in the Answer Key itself were wrong and that affects the entire examination system itself, a paramount duty is cast upon the Commissioner as well as the State Government to see that the examinations shall not be visited with such fundamental mistakes. Competitive examinations are aimed at judging the calibre of the examinee which is reflected in his answer sheets. Prospectus itself say that there Is no provision for re-checking or revaluation of the answer scripts as the valuation or scoring will be error free. When such a provision is given in the prospectus itself, a duty is cast on the Commissioner as well as persons at the helm of affairs to see that the examinauon is error free. A duty is cast on the State Govtrnment to see that examinations they conduct would inspire the credibility and confidence of the community It should have high academic standard and soundness so that the best talent could be found out.

21. Right to education is a fundamental right guaranteed under the Constitution of India. Infraction of such right in whatever manner would be illegal. Those who are clothed with the power to hold competitive examination are exercising a public duty, their acts have the insignia of a public element. Consequently, a corresponding public right on the examinees. Intraction of such rights will cause civil consequences and would be violative of Article 14 of the Constitution of India. Examinees are entitled to have their papers correctly and properly valued, which right is spelt out from the power to conduct examinations by the Commissioner Merit of the candidates cannot be judged based on a rank list which has lost its substratum. Arbitrary and capricious acts of the examiners are not immune from interference by this Court under Article 226 of the Constitution of India.

22. We perused the report as well as the answer key prepared by the panel appointed by this Court. We noticed that there is unanimity in their views for deleting certain questions. Panel recommended deletion of additional questions as well. Panel has also given correct answer in the key from the choices given in the question booklet. Panel also stated certain questions carry more than one answer and included in the Answer Key as directed. Counsel for some of the candidates submitted that giving marks for questions which carry more than most appropriate response is illegal and irregular and would go against the prospectus and directions given to the examinees. In the Scheme of Examination, Clause 9.4.1 of the prospectus says that the examination will be objective in nature and based on single response that is, for each question, four or five suggested answers will be given, of which one will be the most appropriate response, and the candidate will have to select and mark the answer in the appropriate space in the answer sheet. Negative mark is also provided in the prospectus. Clause 9.4.5 says in the event of failure to answer a question that is, no response is indicated for an item in the answer sheet, no deduction

from the total score will be made. However, more than one answer indicated against a question will be deemed as incorrect response, and will be negatively marked, and therefore the candidates are advised not to attempt an answer, should they not be sure of the response because mere guessing may lead to choice of wrong answers, with the consequent penalty of negative marking. Therefore, reading Clause 9.4.1 along with 9.4.5 question setters can put questions and corresponding choices in the question booklet of which one will be the most appropriate response.

23. In a multiple choice objective test, it is imperative that the answers to the questions indicated must not carry two correct answers. Supreme Court in Kanpur University and Others Vs. Samir Gupta and Others, observed that in a system of multiple choice objective type Test care must be taken to see that questions having an ambiguous import are not set in the papers and the questions have to be clear. If there are more than one correct answer, the candidates would be confused as to which would be the most appropriate answer lest he may get negative mark as per the prospectus if attempted. The examinee therefore, may leave the question unattended because prospectus specifically says that a question will have only one most appropriate response (correct answer) In the instant case, even the question setters themselves have admitted that certain questions carry more than one correct answer, so found by the panel appointed by this Court as well. Objective type examination involving combination of multiple choices, call for only one acceptable response. In this case, going by the prospectus also there shall not be more than one most appropriate response to a question in accordance with Clause 9.4.1 read with Clause 9.4.5. In the above circumstance, we accept the contention that if a question carries more than one most appropriate response (correct answer) the same would go against Clause 9.4.1 read with Clause 9.4.5. Therefore those type of questions which would carry more than one correct answer as pointed out by the panel appointed by this Court have to be deleted from the answer key.

24. This Court after perusing the report of the Expert Panel and after hearing the arguments of Counsel on either side directed deletion of the questions recommended by the panel, as well as the questions which carried more than one correct answer as pointed out by the panel and follow the Answer Key prepared by them accordingly. The rank list was accordingly recast and admissions were regulated on the basis of the new rank list.

25. Counsel appearing on behalf of some of the students prayed for a re-examination. We are of the view such a request cannot be accepted, since that will cause great injustice to students who have attended the examination after strenuous preparation. In the present situation, the only reasonable approach is to re-cast the rank list and effect admission accordingly. We ordered so and admissions were regulated accordingly.

26. We also noticed that the Commissioner had already issued notification No. CEE-A/401/99 stating that three questions from Physics and one question from

Mathematics were wrong. Consequently, the resultant maximum marks of 468 and 476 respectively of the above subjects were to be equated to 480. Counsel for some of the Petitioners submitted that the procedure followed by the Commissioner on the basis of the above mentioned notification for equating the marks on deletion of certain questions to 480 is not scientific and would change the percentage and marks, if minus marks are also taken into, consideration. This contention was refuted by learned Government Pleader appearing for the Commissioner as well as some of the examinees. A statement was also filed to that effect. A detailed statement has been filed by Advocate Sri S.A. Razack, appearing for some of the students with facts and figures supporting the notification issued by the Commissioner. Counsel submitted that unless it is so equated as done by the Commissioner great injustice would be meted out to the examinees. We do not find any illegality in the procedure adopted by the Commissioner in equating the marks to 480 on deletion of certain questions from various subjects. When the total number of questions and the maximum marks vary, it has to be brought to a common maximum to give equal weightage to all subjects and the same can be done only under a proportionate assessment under a common maximum for all the subjects. We noticed the procedure adopted by the Commissioner was more acceptable to ensure minimum damage to deletion of questions and to ensure fairness to all. This was the principle followed by a Division Bench of the Andhra Pradesh High Court also in *Chalamalasetty Satyendra Kumar and others Vs. Government of A.P. and others*, . In that case 38 questions were deleted out of 200. The Court accepted the stand of the authorities converting 162 marks to maximum of 200 so as to assign merit to them. Commissioner, was therefore, directed to follow the said procedure as already indicated in Ext. P-2 in O.P. No. 22161 of 1999 for preparing the final rank list.

27. Commissioner for Entrance Examinations, on the basis of direction issued by this Court, published a fresh rank list vide notification No. CEE-A/401/99 dated 22nd September 1999. The entire admission to the Engineering, Medical and Agricultural Courses was made on the basis of the above mentioned revised rank list. If admissions are regulated on the basis of the above mentioned rank list, there would be change in the rank so far as some of the candidates are concerned. Counsel appearing for some of the candidates submitted that if the admissions are regulated on the basis of revised rank list, that would adversely affect the prospects of those candidates for getting admission to the Engineering, Medical and allied courses. Counsel, therefore, prayed for a direction to the State Government to increase the number of seats in the Medical and Engineering Colleges in the State. We notice that subsequently, the State Government have increased seats in the Engineering Colleges and the interest of majority of students has been safeguarded. In the case of increase of seats in the Medical Colleges, we are of the view that such a direction cannot be issued to the Government. Evidently, they claim admission on the basis of a rank list which was illegally prepared. With regard to the question of increase of seats for

M.B.B.S. course, as we have already indicated in our interim order dated 15th December 1999, that it is a matter for the State Government to decide, for which this Court is not justified in passing any order.

28. Contention was raised by some of the Counsels at the bar that this Court should take appropriate action to fix accountability to the persons who are instrumental for the present fiasco. Suggestions were also made at the bar for the extreme necessity for revamping the whole system of Entrance Examination. We notice that when this Court expressed its deep anguish in the manner in which the Entrance Examination was conducted, Government took the matter in all its earnestness and passed an order dated 20th September 1999 constituting an Expert Committee to study the existing system of Entrance Examination for admission to Professional Courses and to recommend modification. Panel consisted of the following members:

1. Dr. A. Karlo, Director, Indian Institute of Management (IIM), Kozhikode.
2. Dr. G. Rangarajan, Professor of Physics and Chairman, Joint Entrance Examinations, Indian Institute of Technology (IIT), Madras.
3. Mr. M.P. Chardrasekharan, Principal, Regional Engineering College, Kozhikode (Member-Convenor).

The committee after consultations and compilation of ideas and opinions from the public, students, parents, teachers, academicians from Universities, and colleges, non-governmental organisations and wide spectrum of the citizenry of the State and after careful consideration of the various issues involved submitted a report to the Government.

29. The Committee suggested various reforms for the Entrance Examination and made some immediate suggestions for the entrance examination, 2000. Committee made its recommendations to the effect that examination should enjoy credibility and confidence of the community, it should be academically sound and capable of choosing the best, and it should minimise all kinds of biases. They also felt that the process should be amenable to be completed within a reasonable time, and should be transparent in the sense that the procedure should be well-defined and known and secrecy should be maintained, wherever necessary.

30. Recommendations made by the Committee were accepted by the State Government and Government issued order G.O.(Ms.) No. 153/99/H. Edn., dated 22nd November 1999. We hope and trust that the Government would take all measures, to see that Entrance Examination would be conducted for the year 2000 and in future in a manner which would enjoy credibility and confidence in the public. Government should also take all earnest efforts to see that Entrance Examination should be academically sound and could be capable of choosing the best and that it would give no room for malpractices in future. Let us hope and pray that such incidents would not occur in future, and that this Court would not

be called upon to decide such issues in future which would affect the future of our younger generation. With regard to the contention of Counsel for some of the Petitioners that this Court should take appropriate action to fix the accountability to the persons who are instrumental for the present fiasco, we are not expressing any opinion. Those are matters for the Government to decide. We leave it to the wisdom of the State Government.

Original Petitions are disposed of as above.