
(1997) 07 AP CK 0081

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 696 of 1997

Dr. I. Prakash Kumar

APPELLANT

Vs

The University of Health Sciences and Others

RESPONDENT

Date of Decision : 25-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 5 ALT 197

Hon'ble Judges : P.S. Mishra, C.J.;P. Ramakrishnam Raju, J

Bench : Division Bench

Advocate : S. Sharath Kumar, for the Appellant; K.G.K. Prasad for Respondent Nos. 1, 2 and 4 to 6 and Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.S. Mishra, C.J.—Instant appeal under Clause 15 of the Letters Patent of the Court has arisen from the Judgment in a petition by the appellant under Article 226 of the Constitution of India alleging, inter alia, that he has been failed in the Post Graduate annual examination of M.S. General Surgery conducted in January, 1996 in an unjust manner and sought the relief accordingly of getting work sheets of both theory and practical (clinical) re-evaluated and if successful in re-valuation to declare his result accordingly.

2. According to the petitioner - appellant he was a bright student throughout his academic career having secured 6th rank in the entrance examination for medical course in 1976 and after doing his M.B.B.S., joined Government Service, applied for Post Graduate Medical Course under the Service category, secured 2nd rank in the entrance test for the said purpose and accordingly he was allowed to sit in M.S. General Surgery Course. Because of his ill-health, however, he could not do well in the annual examination held in January, 1995 and could not sit also in the examination which was held immediately thereafter i.e., in July, 1995. He, however, wrote the annual examination again in January, 1996. Two external and two internal examiners, however, found that his performance

was of "C Grade and accordingly failed him. Petitioner -appellant has alleged -

"The object of this writ petition is to show as to how the institutions of higher learning are being reduced into dens of slavery and how the meritorious candidates are made to suffer for the simple reason that they are not able to satiate the illegal demands of certain self-seekers who are masquerading as professors in preference to the 3rd rate mediocre students. The case on hand presents the pathetic story of a meritorious student throughout his academic career is being dubbed as a third class student and how unjustly he is being deprived of the qualification i.e. Master of General Surgery for which he is otherwise entitled by virtue of his calibre and competence. The petitioner is making an humble attempt to cleanse the administration in the institution of higher learning and make them seats of real learning and not dens of slavery. The relationship between a master and a disciple is an age old tradition in this country. No student would be so folly to take the extreme step of accusing his own master. But, this relationship more or less depends upon both sides. If the master represents the real talent and learning and conducts himself as an ideal person, the institutions of learning will achieve their objectives, but if the master behaves in a manner not befitting to his stature then the student is at liberty to expose such a master and the petitioner humbly believes that it becomes the duty of the student to expose such self-seekers masquerading as teachers and the petitioner is prepared to face any consequence for discharging his duties towards the society. Many of the students are reeling under a feeling that they are able to get degrees only at the mercy of their professors and not because of their calibre and competence. Very few are able to put up still resistance against the autocratic functioning of the professors and in the process are sacrificing their interest. The petitioner is actually aware of the fact that the examination system at the Post Graduation level in the medical courses is highly lopsided and it is very very difficult to prove unfettered bias, mala fide intentions and rank partiality of the professors and any student who opposes this prevalent malady may not get the degree in his life time. The petitioner believes that the degree unaccompanied by required learning is as useless as the degree without the seal and the spine of fight against the injustice and without the real moto to serve the society in their respective capacities. The petitioner with a lot of mental agony and torture has decided to file this writ petition to expose the injustice being meted out to the Post Graduate students in the medical courses and forget about his degree once for all. The petitioner humbly believes that time has come to subject the administration of Post Graduate Institutions in medicine to strict judicial scrutiny and scan them and if necessary to weed out the unscrupulous elements masquerading as professors. It is necessary in wide public interest to fight against the rank nepotism and partiality and suffer the consequences rather than meekly surrender to the autocratic style of functioning of the professors. The petitioner prays that this Hon"ble Court may scrutinise the dispute raised in this petition more with an intention to keep up the age-old traditions and values in our society rather than to reject it viewing it as an emotional outburst of the

petitioner against his professor."

3. The factual matrix as stated in the petition is as follows:

"I have obtained 2nd rank in the Entrance Test and was allotted seat in M.S. General Surgery Course which is of three years duration. But the in-service candidates who had put in five years of service are entitled for one year exemption in the course. I was given this exemption by the letter dated 13-10-1992 by the 1st respondent University vide proceedings No. 6415/EA2/92. Thus, though I am a Doctor by profession my body constitution is prone to Urolithiasis in the kidneys despite the best treatment and having observed all precautions I used to suffer occasional spells of pain in the kidneys. This physical disorder has a very deleterious effect on my body and it has been effecting my functioning as a doctor. I mainly admit that this ailment did suffer me and I could not attend the course as I could have as a regular student. I am not so regular in the course was plainly because of this ailment and for no other reason. At the outset after my joining in the course, I met the 4th respondent Sri A. Subbarao and personally explained to him my physical disorder and my health condition and sought his co-operation for completing my course.

This forthright approach on my part has been taken by the 4th respondent as an opportunity to subject me to mental harassment and agony and he used to slight me in front of the fellow doctors. On a number of times I met him personally and told him that I am unable to put up with his public insults and I requested him to treat me like a fellow doctor. It is also a fact that on certain occasions I did answer back his nasty comments against my person. I have no regrets for them. Mr. A. Subbarao who used to pretend as a soft spoken person and behave very nicely when I met him personally. But, he used to be very crude, arrogant and use filthy language against his own students. On a number of occasions he used to drive home point that I could never dream about getting the certificate without his blessings. I feel that I were to get a certificate only because of his blessings and not for my calibre and competence, but I did not want it and I conveyed this message to him. I was told by my seniors that Dr. A. Subbarao is a very revengeful person and any kind of strained relationship with him would cost dearly to me and it proved to be so in my case also. I appeared for the M.S. annual examination in 1994 after a lot of efforts and after overcoming several hurdles created by Dr. A. Subbarao, I spent all my energies only in overcoming the hurdles created by him and virtually left with no time to concentrate on the studies. I remained unsuccessful in the year 1994 August annual examination. I appeared the Annual examinations in January, 1995. Two candidates, myself and Dr. Anjaneyulu wrote the annual examinations. But, Dr. Subbarao sought to it that I was failed in that examination. I can claim and I am ready for a thorough scrutiny also of my claim that I fared very well than Dr. Anjaneyulu, but I was forcibly and intentionally failed in the examination. I did not appear in the annual examinations conducted in July, 1995 because of my ill-health. Dr. Subbarao enquired why I did not appear in the test. I informed him about my ill-health. I

wrote the M.S. annual examinations in January, 1996 which is the disputed, examination in which I was failed intentionally.

The Post-Graduate Annual Examination consists of 4 theory papers and the practical examination called clinical and oral examination. I am confident and I believe that I can claim that I have done my theory examinations better than Dr. Rajaram who has been declared passed in the 1996 Annual Examination conducted during January, 1996. The whole mischief in the Post Graduate annual examination is possible in the 2nd part of the examination which is called clinical and oral examination of the candidate. I can claim that I could be declared as passed if the yardstick which is applied to Rajaram is also applied to me. In the sense the examiners have set the yardstick for passing off the candidate and such a yardstick should be applied equally to all the candidates in the examination and there is no exemption or exception to any category of candidates. The two internal examiners who were present in the examination in which I along with Dr. Rajaram appeared were Dr. S. Krishna Prabhakar, Professor and Head of the Department of Surgery, Kakatiya Medical College and the second one was Dr. A. Subbarao who is cited as 4th respondent in this writ petition. The two external examiners were Dr. Ravi Shanker, Professor of Surgery and Dr. Varsha Sahadev, Professor of Surgery who were cited as respondents 5 and 6. The practical examination took place on 19-1-1996. The pattern of the practical examination consists of:

1. Examination of patients.
2. Identification of Instruments.
3. Identification of specimens and X-rays.
4. Operative surgical procedure.

In the first bit each candidate is required to examine one patient which is called long case. The duration of the examination of the patient is roughly about 45 minutes. Nobody is sure whether each candidate is given exact 45 minutes. This duration solely depends upon the whims and fancies of the internal examiners. In my case, I was asked to examine a patient whose ailment I diagnosed on the basis of symptoms as obstructive jaundice with a lump in the abdomen. I have explained the reasons for my diagnosis correctly, accurately according to my knowledge in the case sheet. After the case sheet is prepared and handed over to the examiners, the examiners in turn interrogate the candidate on the basis of his diagnosis and finding of the ailment of the patient. I have answered almost all questions and it is necessary to point out that there are no exact answers for certain behavioral attitudes or symptoms of certain diseases. One symptom could be a cause for different ailments and with the kind of knowledge we have in the clinical examination of the patients to-day in the country, it is not possible to say with exactitude that which symptom is the definite cause or representative of which disease. No doctor or even for that matter a professor can say with certainty and answer all questions with exactitude In respect of certain questions

which were above my knowledge, I did not make a wild guess and answered vaguely. In my view such an attempt by a doctor would work against the General Public Interest. When one is not sure about a particular point, propriety demands that one should plainly admit his ignorance and attempt to know about it. In my case too, I did not answer some bits in the long case. In the second leg of first bit i.e examination of patients a candidate is allotted 3 short cases (patients) for clinical examination with a duration of 15 minutes distributed into five minutes for each case. This bit of the examination does not include documentation of the clinical findings. In my case, I found that the 1st case (patient) was suffering from second Aries in the neck with occult primary. The 2nd case was carcinoma of the right breast. The 3rd case was cystic hygroma in right supra clavicular fossa of a female child. The very same patients were examined by the other candidate Dr. Rajaram and it is necessary to examine his case sheet also of the patients for a comparative evaluation of the performances of the two candidates who appeared in the same test. This comparative evaluation is necessary to examine the truth or otherwise of my claim that I was meted out a raw deal in the examination despite my best performance. Since the practical examination took place in a small ward, it was possible to know the reaction of the examiners to the performance of the candidates. In our case, there were only two candidates and 4 examiners. Unfortunately, Dr. Subba Rao had made nasty comments against me even in the examination hall. Dr. Varsha Sahadev offered some resistance to this kind of peculiar behaviour on the part of Dr. Subba Rao. She enquired from me as to what are the causes for this strange relationship between me and my professor Dr. Subba Rao. I could not explain to her everything in the examination hall. But, at the end of the examination both external examiners told me that I have done better than the other candidate i.e. Dr. Rajaram. Dr. Varsha Sahadev told me that I should pass the examination if the other candidate has any dream of getting through the examination. In fact, she congratulated me in advance. After the examination was over and when we left the examination hall, the four examiners were closeted in a hall and discussed about the performance of the candidates. I have a definite doubt and I feel I am right in entertaining the doubt that Dr. Subbarao played the worst game in the internal discussion among the four examiners. Dr. Subbarao's son-in-law's brother Dr. V. Satyanarayana Murthy is a practising Surgeon at Jagtial where I am now working. The professional jealousy of Dr. V. Satyanarayana Murthy could be the inherent reason for Dr. Subbarao's unwanted animosity towards me. I am prepared to prove the partiality and bias against me of Dr. Subbarao if the Hon'ble Court summoned the answer scripts of both the theory and practical examination of both the candidates and they are sent to examiners outside the State of Andhra Pradesh. I spoke to Dr. Ravi Shanker on 22-1-1996 at 7.30 p.m. on phone and I was revealed certain startling things about the two external examiners offered stiff resistance to the proposal of Dr. Subbarao to fail me, but had fallen in line with him at a later stage and after much persuasion I have recorded cassette of my talk with Dr. Ravi Shanker which I may be permitted to produce at the relevant point of time. I have made detailed representations

explaining the injustice done to me to the Vice-Chancellor of the University. The first representation was received by the respondent - University on 23-1-1996 and the second representation was dated 1-3-1996. I reliably learnt that the University has called for remarks from the external examiners about my allegations in the above representations and I also came to know that the external examiners were sympathetic towards me in the back drop of the above sequence of events. It is necessary for this Hon'ble Court to summon the original work sheets of both the candidates i.e. me and Dr. Rajaram of both theory as well as practical examinations and the same to be examined by the Court. The theory answer script of both Dr. Rajaram and me should be sent to independent examiners from outside the State for evaluation and I am ready to bear the costs of the same if the Hon'ble Court directs me to do."

4. Counter-affidavits are filed by the Registrar of the University, by Dr. A. Subbarao, by Dr. J. Ravi Shankar and by Dr. Mrs. Varsha Sahadev. Petitioner has filed additional affidavit and reply-affidavit to the counter-affidavits. We do not propose to deal the contents of the affidavits, as learned single Judge has chosen to summarise their stand and we see no need to elaborate any further than to reproduce the same:

"In the counter affidavit of the Registrar of the University, it is stated that the petitioner is not such a brilliant student, he took six years to complete the five year M.B.B.S course and obtained only second division and did not get distinction in any subject. In the entrance test he also got second rank only among the service candidates and not in the general list. It is also stated that his desertation was approved by Dr. Ghanasham Das Varma and Mr. A. Subba Rao had no direct connection with the petitioner and had no occasion to ill-treat the petitioner. It is also pointed out that perhaps the ill-health of the petitioner contributed to his failure. It is also stated that all the four examiners were unanimous about the results and further that in the representation to the Vice-Chancellor he has complained against both the internal examiners whereas in the writ petition he has confined his allegations to Mr. Subba Rao alone. It is further stated that the examiners denied the allegations and, therefore, the writ petition cannot be accepted.

Mr. A. Subba Rao has filed a separate affidavit denying the allegations and stating that the petitioner himself has acknowledged the help given to him for his dissertation which was approved. He also pointed out that he was junior most of the four examiners and it was ridiculous to allege that he could have manipulated the results and he has specifically denied all the mala fides attributed to him.

Mr. J. Ravi Shankar, Assistant Professor of Surgery, Madras, has also filed a counter affidavit in which he accepts that a telephone conversation was made by the petitioner and has reproduced the conversation as recalled by him. He has stated that it was irregular for the candidate to ring up the examiner and he has specifically denied any manipulation of the results and has stated that the decision was taken unanimously at the time of the examination and the result

was given to the University in a sealed cover."

5. The learned single Judge has remarked in his Judgment that the basic conflict is between the perception of the candidate that the evaluation is subjective and arbitrary as against the perception of the University that re-evaluation cannot be tolerated at all, whatever be the circumstances, and observed:

"Such a complete denial of a review of the examination result would only protect the authority of the examiners to evaluate the candidates even subjectively and arbitrarily. There is absolutely no means to ascertain whether the evaluation was done in an objective and proper manner if the University itself does not have any checks. So far as the question of judicial review is concerned, interference is normally called for where some mala fides are established and in the general run of the cases, it is almost impossible for any one to establish any mala fides. If this case were to be considered only with reference to the mala fides, it has to be said that the allegations of the petitioner will be only his own feeling of being ill-treated and his own assumption that because some rival doctor is related to Mr. Subbarao he must have seen to it that the petitioner does not succeed in improving his academic accomplishment. When these allegations are denied, it is the end of the matter.

After observed as above, learned single Judge has stated:

"However, I am very much perturbed by the other aspect namely that there are absolutely no markings on the papers and there is no record at all of the manner in which the candidates were evaluated. The thesis of both the candidates have been approved. But, in all the subjects, the petitioner has been given the "C" grade and the other candidate has been given "B" grade. It is quite possible that after a discussion the examiners decided just to give them the grade on a general impression. I do not know whether to call it arbitrary or to call it a bonafide assessment. Except to say that there is no means of verifying whether the evaluation was objective and that the University has not provided for any checks against the arbitrary exercise of power, I cannot resolve this dilemma in favour of the petitioner. Only because of the doubt that there could have been a consensus of the examiners on a general impression not pass the petitioner, it cannot be said that the evaluation was mala fide. I, therefore, decline to interfere."

6. Since this Court has been flooded by petitions by teachers, employees as well as students and, in many cases, the Court was rather informed wrongly by the University about the state of facts, in one case in Writ Appeal No. 1712 of 1996, this Court directed for an inquiry into the correctness or otherwise of the affidavit filed on behalf of the University by the Registrar and the Vice-Chancellor of the University was asked to constitute a committee for the said purpose. The committee reported that the affidavit which had been filed on behalf of the University did not contain true facts. Dilemma which learned single Judge has noticed, we thought, can be resolved if one test is applied to see whether there is

any truth in the allegation of the petitioner - appellant that there was no proper evaluation, by sending petitioner - appellant's answer scripts of theory examination, dissertation etc., to some one outside of the University and as suggested on behalf of the University, on 26-6-1997, the Court ordered as follows:

"In view of the observations in the impugned judgment, it appears to us to be a fit case, to direct the Vice-Chancellor, University of Health Sciences, to send in a sealed cover the answer script and thesis of the appellant-petitioner in respect of the subject of General Surgery to the Head of the Department, General Surgery, Nizam's Institute of Medical Sciences, Hyderabad within one week.

The Head of the Department, General Surgery, Nizam's Institute of Medical Sciences, Hyderabad, is directed to examine the answer script etc. with reference to the question paper, which also will be sent to him by the Vice Chancellor and award grading to the petitioner and send report to this Court in a sealed cover within one week of the receipt of the answer script etc.,"

7. In compliance with the above, the Vice-Chancellor of the University immediately sent the answer scripts and thesis of the appellant as well as the question papers to the Head of the Department, General Surgery, Nizam's Institute of Medical Sciences, Hyderabad. The Head of the Department of Surgery, Nizam's Institute of Medical Sciences, Hyderabad has sent his evaluation report in respect of dissertation and four answer scripts of Theory Examination of petitioner-appellant which reads as follows:

"NIZAM'S INSTITUTE OF MEDICAL SCIENCES

Panjagutta, Hyderabad-500 082 India.

Dr. R.A. Sastry, Phone: 3320332 Ext. 4 Professor & Head 3311409 (Res) Dept. of Surgery (Surgical Gastroenterology) Fax: 040-310076. EVALUATION REPORT

The following is the evaluation Report of the dissertation and four answer scripts of Theory Examination that were sent by the University of Health Sciences, Vijayawada, through the Director, NIMS in deference to the AP High Court Order. The evaluation was done as per the existing rules of the University as supplied to me vide ref No. E2/6341 /95 of University of Health Sciences.

Qn. 1 Qn.2 Qn. 3a Qn. 3b Qn. 3c Qn. 3d Overall Result Paper-1 B+ B B+ B+ B+ B B Paper-2 B B+ B+ B+ B B+ B Paper-3 B B+ B B B+ B B Paper-4 B B B+ B+ B B B Dissertation ACCEPTED (Grade "A": Distinction; "B + ": Above Average; "B": Pass; "C: Fail) (Sd.) Dr. R.A. Sastry Professor of Surgical Gastroen techonology Head Dept. of Surgery Nizam's Institute of Medical Sciences Punjagutta, Hyderabad - 500 082

8. Grades which are assigned to the petitioner - appellant by the Professor and Head of the Department of Surgery, Nizam's Institute of Medical Sciences show that in quite a few papers, his performance is above average, his dissertation is

acceptable and in a few, he is in pass category. Head of the Department of Surgery, NIMS, however, has not graded the petitioner -appellant in any paper to have failed.

9. We do not propose and we have good reasons to refrain, which action we do not state in the instant order, that there is any mala fide in quite so specifically alleged on behalf of the petitioner - appellant that this Court should examine the same and find out whether the petitioner - appellant is a victim of some designs of a Professor in the University. Malice in fact differs from malice in law and even if there is some chance for the view that the consensus of the scholars who decided against the petitioner - appellant in the examination cannot be easily ignored. We have the same reasons which created serious doubts in the minds of the learned single Judge to see whether there are elements of arbitrariness and/or unreasonableness in the final evaluation of the merit of the petitioner - appellant by the examiners. Answer scripts of theory examination show no sign, learned single Judge has himself examined them, that any examiner ever opened them and evaluated the answers as they merited. When grading 'C' is so commonly applied in evaluating answers to all questions that it gives an impression that a consensus marking was applied without taking notice of the merit of the answers of the petitioner-appellant to any of the questions. We would have gone, however, with the view of the learned single Judge and closed the petition hoping that in the next examination at least careful evaluation of the merit of the candidate would be done but for the fact that, when answer scripts and dissertations are examined by an independent professor and Head of the Department of Surgery in Nizam's Institute of Medical Sciences, which, of course is outside of the University his report says that the petitioner - appellant in no sense has answered any question to be evaluated as failed. We have thus good reasons to hold that petitioner - appellant is a victim, if not of malice in fact, of malice in law and even if the examiners have acted innocently, the result handed over to him cannot be said to be fair and reasonable.

10. It is a fit case, in our opinion, for interference, if not for the purpose of extending some semblance of justice to the petitioner - appellant, for the purpose of correcting the University that in future it takes care that no candidate is examined casually and no answer scripts are evaluated without answers to all questions properly weighed and accordingly marks or grade assigned. Obviously, without opening the answer scripts, as the examiners appeared to have done in the case of the petitioner - appellant, no answer can be evaluated. The University is expected, and we hope and trust, it shall fulfil the expectations that no candidate is given opportunity to complain that he has been subjected to arbitrary and fanciful determination of his answers to the questions put to him. It would be fair, on the facts and circumstances of this case, in our view, to direct the respondent - University to take a fresh clinical examination and, if it has any doubts as to the grading by the Professor and Head of the Department of Surgery, NIMS, to get the answer scripts and dissertation examined afresh by persons who are qualified for such evaluation and since in the case of the

petitioner - appellant, a controversy has arisen, keep off such persons who are associated with the department of Surgery or any allied discipline in the University and nominate only such persons who can inspire confidence. The exercise of any re-examination must be completed within a period of two months from to-day, failing which, the evaluation by the Professor and Head of the Department of Surgery, Nizam's Institute of Medical Sciences, Hyderabad would be accepted as the correct evaluation of the merit of the petitioner - appellant and result shall accordingly be published. Result so published shall be treated to be one of the year 1996 insofar as the petitioner - appellant is concerned.

11. In the result, the appeal is allowed as indicated above.