

(2005) 01 MAD CK 0077

In the Madras High Court

Case No : Writ Petition No"s. 15351 and 15352 of 2004 and W.P.M.P. No"s. 18221, 18223 and 31261 of 2004

Dr. M. Balasubramaniam and Others

APPELLANT

Vs

The Controller of Examinations, The Tamil Nadu Dr. M.G.R. Medical University, The Director, Directorate of Medical Education and The Director, Regional Institute of Ophthalmology, Government Ophthalmic Hospital

RESPONDENT

Date of Decision : 04-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 01 MAD CK 0077

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : S. Silambannan, for the Appellant; R. Muthukumaraswamy, A.A.G. assisted by M. Vellaiswamy, for 1st Respondent and V. Karthikeyan, Addl. Govt. Pleader for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The petitioners in W.P. No. 15351/2004, Fourteen in number and the petitioner in W.P. No. 15352/2004 are the final

year students of MS Ophthalmology at Madras Medical College, Chennai and Stanley Medical College, Chennai. They took their final year theory

examination between 17/03/2004 and 19/03/2004 and clinical examination between 26/04/2004 and 28/04/2004. While they were awaiting their

results, they were shocked to know on 29/05/2004 that the Controller of Examinations, The Tamil Nadu Dr. M.G.R. Medical University, Chennai,

the first respondent herein, had scheduled for re-examination of MS-Ophthalmology Clinical examination for the petitioners between 14/06/2004

and 16/06/2004.

2. On enquiry, they came to know that one of the students had allegedly used undue influence on the examiners to secure a pass in the clinical examination, examination taken by all the petitioners have been cancelled. As the petitioners did not use any undue influence to pressurize the examiners to secure a pass in the examination, the decision of the Controller of Examinations had resulted in hardship to all the innocent students for the fault of one guilty student. Hence, they have questioned the order of the first respondent dated 27/05/2004 on the ground that it is arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

3. I have heard Mr. S. Silambannan learned counsel appearing for the petitioners, Mr. R. Muthukumaraswamy, learned Additional Advocate General assisted by Mr. V. Karthikeyan, learned Additional Government Pleader for the respondents 2 and 3 and Mr. M. Vellaiswamy, learned counsel appearing for the first respondent.

4. In the counter affidavit filed by the first respondent viz., the Controller of Examinations, The Tamil Nadu Dr. M.G.R. Medical University, Chennai, it is stated that a complaint was received by the Controller of Examinations, The Tamil Nadu Dr. M.G.R. Medical University, Chennai from one Dr. A. Priya, Professor of Ophthalmology, Stanley Medical College, Chennai, who was one of the Internal Examiners, about malpractice/unfair means by which candidates were given pass in MS Ophthalmology clinical examination conducted at the Regional Institute of Ophthalmology, Egmore, Chennai. According to the complaint, while the said Dr. A. Priya was an examiner for MS Ophthalmology from 26/04/2004 and 28/04/2004, she was pressurized to give pass mark to a particular candidate Dr. G. Vivekanandan (petitioner in W.P. No. 15352/2004) through the Director of Ophthalmology stating that she has received several phone calls from persons at the level of Vice-Chancellor to give pass to the said Dr. G. Vivekanandan for which she could not resist. She further complained that the said candidate performed with lease merit but she was forced to give pass mark to him as well as to some other candidates who did not deserve pass.

5. Mr. R. Muthukumaraswamy, learned Additional Advocate General, while leading arguments would submit that as per the complaint, not only a pass mark was given to the said Dr. Vivekanandan, but some other candidates

were also given pass marks. As the said malpractice was in respect of the examinations in MS Ophthalmology held from 26/04/2004 to 28/04/2004, the examinations of all the fifteen (15) candidates, who have taken their examinations were cancelled. There is absolutely no illegality in the impugned order as the authorities empowered to conduct re-examination to ensure fairness in the examination.

6. Mr. V. Karthikeyan, learned Additional Government Pleader appearing for the respondents 2 and 3 herein has also advanced his arguments on the same line.

7. Both the Madras Medical College, Chennai and Stanley Medical College, Chennai, are affiliated to the Tamil Nadu Dr. M.G.R. Medical University, Chennai. Being the University to affiliate medical colleges, it is obligated to conduct examinations and confer degrees. The primary responsibility of the University is to ensure fairness in the conduct of examinations. Unless strict vigil prevails, fairness in the examination cannot be achieved. In the absence of fairness, the merit would be a casualty. If the University allows merit to be a casualty, the very purpose of conduct of examination would only be a farce procedure. The issue on this hand should be looked into based on the above.

8. To appreciate the nature of complaint, it is just and necessary to extract para 4 of the counter affidavit of the 1st respondent University which reads as follows:

It is respectfully submitted that a complaint was received by the Controller of Examination of this University from Dr. A. Priya, Professor of Ophthalmology, Stanley Medical College, Chennai, who was one of the Internal Examiners about malpractice/unfair means by which candidates were given pass in MS Ophthalmology clinical examination conducted at the Regional Institute of Ophthalmology, Egmore, Chennai. It is submitted that in the complaint Dr. A. Priya, has stated that while she was an examiner for MS Ophthalmology from 26/04/20004 to 28/04/2004 at the Regional Institute of Ophthalmology, Egmore, Chennai, pressure was given to her to give pass to a particular candidate Dr. G. Vivekanandan through the Director of Ophthalmology stating that she (i.e.) Director of Ophthalmology) received several phone calls from persons who identified themselves as Vice-Chancellor and Secretary to Chief Minister to give pass, to Dr.

G. Vivekanandan and compelled her to give a pass, for which she could not resist. She has further stated that the particular candidate performed with lease merit and because of this they were also forced to give pass to some of the candidates who did not deserve pass

9. It is obvious from the said paragraph that the Examiner was pressurized to award pass mark to one Dr. G. Vivekanandan and due to the said pressure, she was forced to give pass mark to the said Dr. G. Vivekanandan, who performed with lease merit. To cover up the same, some of the candidates, who also did not deserve pass mark, were also awarded pass marks. In the circumstances, the contention of the petitioners that as one of the candidates indulged in undue influence, the entire examination should not be cancelled, cannot be accepted. Though the undue influence was exercised on behalf of one candidate, in order to give him pass mark, some other candidates were also given pass mark. In the circumstances the decision to hold fresh clinical examination, cannot be held to be illegal, arbitrary or violative of Article 14 of the Constitution.

10. In *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, , the Supreme Court has held that if there is sufficient material on which it can be demonstrated that the University was right in its conclusion that the examinations ought to be cancelled, then academic standards require that the University's appreciation of the problem must be respected.

11. In *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, the Supreme Court has held that "" the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the systems and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded"".

12. In *Union Public Service Commission v. Jagannath Mishra*, (2003) 9 SCC 237 , the Supreme Court has held that where an Expert body comes

to the conclusion on facts, the same should not be ordinarily interfered with by a Court of law.

13. In the matter of conduct of examination, assessment of marks and evaluation of relevant academic standards and practical attendance of such qualification, it would always be better to accept the decision of the academic body to be fair, as the Court is not expert in the manner as to how the examination is to be conducted and as to whether the candidates indulged in malpractice and whether such examination should be cancelled or not.

14. On the facts of the case, out of 15 candidates, some of the candidates were given pass mark though they do not deserve for it. As it is not possible for the authorities to conduct re-examination for one candidate, the only course to be adopted by the University is to cancel the examination in toto and such decision taken by the academic body cannot be interfered solely on the ground that the examination of the candidates who have indulged in influencing the examiners to give pass mark alone should be cancelled.

15. Mr. S. Silambannan, learned counsel appearing for the petitioners would rely upon the judgment of the Supreme Court reported in Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, and contend that cancellation of the examination en bloc is wholly unwarranted and unnecessary. In that case, the Central Bureau of Investigation conducted the written examination for filling up of 134 posts of Constables. After conducting the examination, the contesting candidate in the said case was served with a communication that he was selected for appointment and was also directed to undergo physical fitness test. While the candidates including the contesting respondent were awaiting for the orders of appointment, they were informed that the entire selection was cancelled. The cancellation was challenged on the ground of favouritism/nepotism on the part of the Officers in conducting the physical fitness test. Considering the fact that there was no serious grievance of any malpractices in the process of the written examination and the Special Committee constituted did not appear to have condemned the selection process relating to the conduct of written examination itself except noticing certain infirmities only in the matter of evaluation of answer sheets with

reference to correct answers and allotment of marks to answers of some of the questions, the Supreme Court observed as follows:

... In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that wide-

spread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it

was impossible to weed out the beneficiaries of one or the other irregularities, if any, there was hardly any justification in law to deny appointment

to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. Applying a

unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such

selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried

away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going rather

than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme

and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and

totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational

16. In that case as there was a positive information that except 31 of such selected candidates, no infirmity could be found with reference to others,

the Supreme Court held that the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of

cancelling the entire selection. However, on the facts of this case, though undue influence was exercised by one candidate, the complaint of Dr. A.

Priya was categorical that in order to give pass mark to the said candidate Mr. G. Vivekanandan, some other candidates were also awarded pass

mark. The said complaint does not refer to names of such candidates, who were also awarded pass marks except that of Dr. G. Vivekanandan.

On the facts of the present case, I am of the view that the above judgment of the Supreme Court is not of any help to the petitioners.

17. In view of the above, both the Writ Petitions are dismissed. No costs. Consequently, W.P.M.P. Nos.18221,18223 and 31261 of 2004 are

also dismissed.