
(2006) 04 KAR CK 0053

In the Karnataka High Court

Case No : Writ Petition No's. 5662, 5709, 5740, 5741, 5742, 5945, 5749, 5957, 6011 and 6014 of 2006

Dr. Sandeep B.E. and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 25-04-2006

Acts Referred:

Karnataka Conduct of Entrance Test for Admission to Post Graduate Medical and Dental Seats in Government Medical Colleges, Rules, 2003 — Rule 19 (5)
Rajiv Gandhi University of Health Sciences Act, 1994 — Section 8

Citation : (2006) ILR (Kar) 2535 : (2006) 6 KarLJ 181

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Judgement

N.K. Patil, J.—In ail these cases, petitioners herein, questioning the correctness of the impugned show cause notices all dated 6th April 2006 and some petitioners also assailing the correctness of the Government Order dated 13th March 2006 bearing No. HFW.60 MPS 2006 issued by the State Government and the enquiry report submitted by the Three-man Committee, have presented the instant writ petitions. Further, some of the petitioners have also sought for a writ of prohibition restraining the State Government from taking any further action pursuant to the show cause notice dated 6th April 2006. The interim order prayed for by petitioners herein is to stay the operation of the impugned show cause notices all dated 6th April 2006 and the Government Order dated 13th March 2006 issued by the State Government and to permit the petitioners to participate in the counselling for selection and admission to PG courses scheduled to commence shortly.

2. Petitioners herein claim to be the MBBS graduates. In pursuance of the notification issued by the Rajiv Gandhi University of Health Sciences (herein after referred as "RGUHS") for the Post Graduate Entrance Test ("PGET - 2006" for short) for the academic year 2006-07, petitioners herein have appeared for the said Entrance Examination and the result has been announced on 28th February

2006, declaring their rank and the marks secured by them in the PGET-2006. After announcement of the result of PGET-2006, at the time of convocation held on 3rd March 2006, several PG students, public and members of some organizations have given a complaint to his excellency, the Governor of Karnataka and the Chancellor of the RGUHS and the Hon'ble Minister for Medical Education, Government of Karnataka, stating that, some students who have secured very low marks in the qualifying examination of MBBS course, have secured very high marks/ranking in the PGET -2006. The said complaints were forwarded to the RGUHS for taking appropriate action. The same has been highlighted in all the reputed national daily newspapers on 12th February 2006 and 4th March 2006 which drew every one's attention.

3. It is the case of petitioners that, the complaints are given by those students who could not secure high marks/ranking in the PGET-2006. However, on the said complaint given at the time of convocation to the Governor of Karnataka, the Vice Chancellor and the Minister for Education, the Government has constituted a three-member Committee. The said Committee in turn, has issued the notice to petitioners herein and recorded the statements of petitioners without affording sufficient opportunity to cross examine the witnesses examined by the said Committee. Thereafter, the Committee has submitted its report. On the basis of the alleged report submitted by the Committee, the impugned show cause notices as referred above, are issued stating that, these petitioners who have secured very low marks in the qualifying examination of MBBS course have secured very high marks and ranks in the PGET- 2006 for Post Graduate seat in Medical Colleges and hence, to show cause as to why action should not be taken against them to debar them from one academic year from appearing for PG Entrance Examination conducted by the RGUHS. It is the case of petitioners that, the Government order dated 13th March 2006 issued by State Government constituting three member Committee is one without jurisdiction on the ground that, Government has no power under the Karnataka Conduct of Entrance Test for Admission to Post Graduate Medical and Dental Seats in Government Medical Colleges, Rules, 2003 ("2003 Rules" for brevity). It is their further case that, the issuance of impugned show cause notices on the basis of the alleged report submitted by the three member Committee is also one without jurisdiction and contrary to Section 8 of the Rajiv Gandhi University of Health Sciences Act, 1994 (hereinafter called "RGUHS Act, 1994"). Therefore, being aggrieved by the same, petitioners have sought for stay of the operation of the impugned show cause notices and the Government Order and to permit them to appear for the ensuing counselling of Post Graduate seat in Medical Colleges, scheduled to commence some where during this week. Having regard to this back ground, petitioners herein felt necessitated to present the instant writ petitions.

4. The learned senior counsel appearing for some of the petitioners and counsel appearing for other petitioners, at the outset submitted that, as per Section 8 of the RGUHS Act, 1994, the Government is supposed to communicate the Inspection report and refer the matter to the Syndicate of the University and

ascertain from them regarding the alleged irregularities and thereafter to give advise as it deems fit. In the instant case, no such inspection has been done nor the inspection report placed before the Syndicate or its views ascertained. Therefore, the Government giving advise to the RGUHS in the matter does not arise at ail in the circumstances, the impugned show cause notices and the Government Order are ultra vires of Section 8 of the RGUHS Act, 1994. They submitted that, petitioners herein were not communicated the report based on which, the ranking of these petitioners were nullified nor the petitioners have been informed about the finding recorded by the Committee. No opportunity as such has been afforded to petitioners herein to controvert the findings that have been recorded against the petitioners. The said action of the authority is violative of principles of natural justice and the same is unsustainable. The allegations made against the petitioners herein are all vague and irrelevant The impugned action of the Government in nullifying the result is based on conjectures and surmises. The State Government is not entitled to nullify the same and hence, the same is ultra vires of the constitution of the RGUHS. The said authority has acted on irrelevant materials and has not taken note of Section 8 of RGUHS Act, 1994. Petitioners have also been discriminated in as much as 21 candidates have been alleged to have committed mal practice, but the show cause notices have been issued to only 16 students. Therefore, the impugned action of the authority is violative of Articles 14 and 16 of the Constitution of India. Further, one of the other learned Counsel for one of the other petitioner submitted that, due to award of 12 grace marks by the RGUHS, in view of wrong question given and also for repeating more than four questions, which was given in CET Examinations, petitioners have secured good marks and secured higher ranks. Therefore, all the counsel appearing for petitioners vehemently submitted that, counselling for Post Graduate seat in medical colleges is scheduled to commence any time during the last week of April 2006 and if interim order as prayed for by petitioners herein is not granted, petitioners would suffer irreparable loss and injury which cannot be compensated in terms of money and their entire career will be jeopardized for no fault of theirs. To substantiate the interim prayer sought for by them, one of the learned Counsel for petitioners has placed reliance on the judgment of this Court in case of Durgappa B. v. Principal, Basaveshwara Eng. College, Bagalkot and Anr. reported in 1982 (1) KarLJ 120 and contended that, the student must not only be made known the charge, but he must be made aware of the evidence on the basis of which the Committee proposes to find against the student. He submitted that, if that evidence is not made known to the affected person, then, there is a real breach of natural justice. One of the counsel appearing for petitioner also placed reliance on the judgment of the Apex Court in the case of Board of Technical Education U.P. and Ors. v. Dhanwantri Kumar and Ors. reported in AIR 1931 SC 271 and submitted that, if the notice served on a person is found to be so vague that the person on whom the notice is served could not have effectively defended himself in the inquiry and hence, in the absence of proper notices, the inquiry held was found to be invalid for violation of the rule of natural justice. Sri. Ravi varma Kumar

and Sri. K.G. Raghavan, learned senior counsel appearing for some of the petitioners placed reliance on the judgment of this Court in the case of Sunil Kumar Thakur and Ors. v. State of Karnataka and Ors. In W.P.No. 23521-23554/2004 and connected matters disposed of on 7th January 2005 and decision of the Supreme Court reported in Union of India (UOI) Vs. Chaturbhai M. Patel and Co., In Union of India's case.

5. Per contra, learned Advocate General appearing for first respondent - State Government, inter alia, contended and vehemently submitted that, petitioners are not entitled to seek for any interim prayer on the ground that, the order passed by Government for constituting the three member Committee on the basis of the recommendation forwarded by the RGUHS as per the decision taken by the Committee presided over by the Chairman, who is none other than the Vice Chancellor of the RGUHS itself in strict compliance of the "2003 Rules". He submitted that, the three member Committee has been constituted as per sub Rule 5 of Rule 19 of the said 2003 Rules. The PGET committee convened an emergency meeting on 9th March 2006 to discuss about the discrepancies regarding the rankings of the candidates who had appeared for the PGET-2006 and to discuss the future course of action. The PGET Committee examined all the complaints and issues involved at length regarding the irregularity committed in conducting the PGET-2006 and recommended to the Government to take a decision of its discretion as per Sub rule 5 of Rule 19 of the 2003 Rules. In view of the difficulties like time constraints, regulation of Medical Council of India, calendar of events issued by RGUHS and the decision of the Supreme Court of India and taking serious note of the deliberations of the PGET Committee, and its proceedings and various complaints received from the students, representations from the aspiring PG students, the Government has taken a conscious decision to uphold the academic curriculum and to see that, injustice is not caused to the brilliant students who have not secured high marks in the PGET-2006 Examination, which would have otherwise resulted in undue hardship and mental agony to the students community at large and PG students in particular. Therefore, the Government by its order dated 13th March 2006 has constituted a three member Committee to inquire into the mal practice committed by students in PGET -2006 consisting of the Chief Vigilance Officer of the Department of Health and Family Welfare Services as the Chairman and the Principal of Bangalore Medical College and the Chief Administrative Officer of Karnataka Health System Development Project, Bangalore being the other members of the three member committee. The committee in turn after thorough evaluation and careful analysis of the results of 100 top ranking candidates in PGET- 2006 un-presciently high score of marks obtained by some of the PG aspirants has observed that, four candidates have secured 194 marks out of 200 marks, three candidates have secured more than 190 marks; four candidates have secured more than 185 marks. Out of top 100 rankings, there are 14 candidates who could not pass the qualifying examination of MBBS in first attempt. Among the top 25 candidates, 11 candidates have taken more than one attempt to pass the

qualifying examination. The candidates who have taken more than one attempt in the qualifying examination got top rank. Therefore, the Committee issued notices to first 21 top ranking candidates to elicit information and their opinion and asked them to appear before the Committee as per notice dated 16th March 2006. The candidates have filed written statement on oath and the Committee has heard the candidates regarding their academic background and examined the statements made by them on oath. After thorough evaluation of the performance of the said candidates including these petitioners, the Committee submitted a report to the State Government, stating that, leakage of question paper with key answers has taken place at higher level in the RGUHS at the stage of preparing multiple choice of question papers and the petitioners are the beneficiaries of leakage of question papers at higher level and secured very high marks in the Entrance Examination and recommended to take action against those candidates. Further, the Committee also recommended to conduct a probe by COD regarding the mal practice in the PGET-2006 and also opined that some of the top Officers of the RGUHS was also involved in the mal practices. Therefore, he submitted that, the contention that, petitioners herein who claim to be intelligent, bright and have excellent academic performance in previous examinations is contrary to the material available on record in as much as these petitioners have taken more than one attempt to complete their MBBS course and some of them have even taken more than two attempts like, 3, 4 and 5 attempts to complete the MBBS course and have secured top tanking in the present PGET-2006 and further they have also secured very low ranking in the Entrance Examination conducted by COMED - K. Therefore, having regard to considerable variation in marks secured and the rankings obtained by these students in the PGET-2006 conducted by RGUHS and the COMED-K, especially when the gap between these two Examinations was hardly few weeks, prima facie, it proves beyond all reasonable doubts that, the petitioners herein are the beneficiaries of leakage of question papers at higher level. Having regard to this discrepancy, irregularity, leakage of question papers at higher level with the connivance of the Offices of the RGUHS who are concerned with conduct of PGET-2006, the Government has rightly taken the final decision as envisage under Sub - rule 5 of Rule 19 of the 2003 Rules. As per Sub-rule 5 of Rule 19, in all matters pertaining to conduct of Entrance test, the decision of the Entrance Committee shall be final subject to review by the State Government. In the instant case, the Committee referred the matter to the State Government to take final decision in the matter. Accordingly, the Government has taken a final decision in the matter and constituted the Enquiry Committee on the basis of the report and final decision has been taken in order to give justice to meritorious students. Therefore, the petitioners are not entitled for grant of any interim prayer sought for by them. He further submitted that, the reliance placed by learned senior counsel for one of the petitioner is no where applicable to the facts and circumstances of the present case and no assistance as such can be drawn from the same. Further, learned Advocate General relied upon the decision of the Apex Court in an identical matter made on the interim applications in Writ Petition

(Civil) No. 157/2005 on 13th April 2006 pertaining to Post Graduate Examination and drew my attention to that portion of the judgment wherein the Apex Court has refused to grant the interim order in respect of 20 candidates and did not allow them to participate in the ensuing counselling and they were excluded from the merit list and directed that, the candidates who are next below in the order of merit shall occupy the place which has fallen vacant and the list shall accordingly be rearranged. In the instant case also, these petitioners being the beneficiaries of the leakage of question papers with the connivance of the higher Officers, are not entitled to seek any interim order as sought for by them nor the petitioners have made out any good grounds to consider their request. Hence, the interim order sought for by them may be rejected at the threshold itself.

6. I have heard learned Counsel for petitioners and learned Advocate General appearing for first respondent at length on 20th and 21st April 2006. After careful evaluation of the entire material available on file, including the Government Order and the report submitted by the three member Committee and the show cause notices issued by the competent authority and taking into consideration the rival contentions urged by learned Counsel appearing for petitioners and learned Advocate General appearing for first respondent, the only point that arise for consideration in these writ petitions is as to:

WHETHER petitioners herein have made out a case for grant of interim order as prayed for by them?

7. After careful perusal of the Government Order, the Committee report, the impugned show cause notices issued to petitioners herein, it emerge on the face of the materials available on file that, the result of PGET-2006 conducted by the RGUHS as per the Rules 2003 has been announced and several complaints have been given to his Excellency the Governor of Karnataka, the Chancellor of the RGUHS as well as the Minister for Medical Education and Vice Chancellor of the University at the time of convocation held, stating that candidates who have secured low marks and rankings in the qualifying MBBS course and those who have taken several attempts to complete MBBS course have secured unprecedented high marks and top rankings in the PGET-2006 as per the merit list published by the RGUHS. The said complaints have been forwarded to the PGET Committee. The Committee has held an emergency meeting on 9th March 2006 to discuss about the discrepancy regarding ranking of candidates who have appeared for the PGET-2006 and to discuss the future course of action. The Committee has examined all the complaints received and after due deliberations of the issues involved at length, recommended to the Government to take a decision in its discretion as per Sub- rule 5 of Rule 19 of the "2003 Rules". Having regard to the irregularity pointed out by the Committee in conducting PGET-2006, the involvement of some of the top rank Officers of the RGUHS and taking into consideration the grievance redressed by the aspiring PG students and the magnitude of involvement of some of the Officers of the RGUHS, and some of the students who are the beneficiaries of the leakage of question papers,

the Government, in its wisdom and in fitness of things, by its order dated 13th March 2006 has constituted a three Member Committee consisting of the Chief Vigilance Officer of the Department of Health and Family Welfare Services as the Chairman and the Principal of Bangalore Medical College and the Chief Administrative Officer of Karnataka Health System Development Project, Bangalore, as the other members of the Three Member Committee. The Committee after issuing notices to these petitioners including other students, has taken their statements. After critical evaluation of the entire material collected from the RGUHS authorities threadbare and after evaluation of the performance of these students at the qualifying MBBS course and the marks/ranking obtained in PGET-2006 and the marks secured and ranking obtained in the Entrance Examination conducted by the COMED-K, have found that, there is considerable variation in the rankings obtained by these petitioners. From the results of PGET-2006, it can be seen that, four candidates have secured 194 marks out of 200 marks, three candidates have secured more than 190 marks; four candidates have secured more than 185 marks. Out of top 100 rankings, there are 14 candidates who could not pass the qualifying examination of MBBS in first attempt. Among the top 25 candidates, 11 candidates have taken more than one attempt to pass the qualifying examination. The candidates who have taken more than one attempt in the qualifying examination got top rank. Further, it is significant to note that, four candidates who have secured 194 marks out of 200 marks, have obtained the ranking ranging from 2000 and 3600 in COMED -K examination wherein the gap between the two examinations was hardly few weeks. Thus, there is lot of difference between the rank obtained in the PGET-2006 and the ranking secured in the COMED- K examination. The petitioners have completed their MBBS course by taking more than one attempt ranging upto five attempts that has been clearly mentioned in the show cause notices issued to petitioners. The respondents have furnished all the details in paragraph 6 of the statement of objections fled by them. The Committee after examining the past performance of the candidates in the qualifying examination and leakage of the question paper with key answers taken place at higher level in the RGUHS at the time of preparing the multiple choice question paper, has given a specific finding that, these petitioners are the beneficiaries of leakage of question paper at higher level and have secured higher marks/ranks in the examination and therefore recommended to take action against such candidates and further recommended for a probe by a statutory investigating authority, Viz. GOD regarding the mal practice scam and further opined that, some of the top Officers of RGUHS are also involved in the mal practice scam. The Committee has also resolved to award 12 grace marks in medical and 3 grace marks in dental to all the students as these questions were incorrect and Committee also approved to modify 8 answer keys in medical faculty as per the opinion of the subject experts and also resolved to give multiple answer keys wherever more than one answer was found correct as per the opinion of the subject expert. Even if the said grace marks is added, the petitioners herein who have taken more than one attempt to pass the qualifying examination have secured unprecedented high

marks in the PGET -2006. It reveals from the performance of the petitioners in the MBBS course that, there is no considerable improvement for securing high marks in the subsequent examination, if they called themselves brilliant students and their performance was excellent in SSLC, PUC, and the CET examination and MBBS examination. After microscopic evaluation of the performance of these students in their MBBS course, it is significant to note that, in the report of the Committee produced by one of the students in W. P. No. 5709/2006, in internal page 19, it can be seen that, the manuscript questions are sent to the printer by the special Officer himself without even opening the sealed pockets sent by the question setters and such is the way of ensuring secrecy, confidentiality and privacy in the examination process. Further, the committee has observed that, in the RGUHS, the entire examination process has become brazen mockery and these facts make the possibility of the question papers getting leaked or questions with answers getting copied at this stage or at stage earlier to the question papers reaching the examination centres. Further, it is observed that, the Officers were not accompanied at least by one armed police and no armed police or official government security was provided to the strong room at RGUHS. Therefore, it is observed that, the RGUHS has not proceeded in accordance with law with any set of procedure systematically in its examination process. The Committee has recorded a finding that, it is with higher authority connivance, the Registrar, In-charge Deputy Registrar, PGET, and other officers and staff involved in PGET examination process joined together as a well knit team hatched conspiracy to commit the examination malpractice. These officials had certainly managed to get PG aspirants more of attempted MBBS candidates, whom they would have approached and convinced that, they would get questions with answers and clinched the agreement for monetary considerations and afterwards, the questions with key answers would have been delivered to the candidates. This mal practice had certainly led the high rankings conferred to the below average MBBS candidates. It is a symbol of crime against the students brain and the culprits should be hauled up. Further, the Committee also observed that, they have conclusive documentary evidence to prove that leakage of question papers with answers had taken place at higher level only and the needle of suspicion points to higher authorities and the students who have benefited through exam fixing agreement, These specific observations are made by the Enquiry Committee in their report only after thorough evaluation of the records available on their file and the relevant material made available by the RGUHS authorities. The fact and circumstances and the evidence referred by the enquiry Committee are astonishing in nature. The petitioners have wantonly not chosen to ask the Committee to permit them to cross examine the witnesses examined by the Committee. Therefore, it is not now open for them to contend before this Court that, they have not been permitted to cross examine the witnesses. Hence, the same is not justifiable. Having regard to the facts and circumstances of the case, as stated above, the Court cannot remain a silent spectator watching subversion of the relevant provisions the Act are violated as per the whims and fancies of the officers who are in-charge of conducting the Examinations. The

persons who are appointed to a high post should add glory to the post and not be a symbolic figure oblivious of the duties and functions which he or she is expected to carry out. As per the well settled principles of law laid down by Apex Court, in the case of Central Board of Secondary Education Vs. Vineeta Mahajan (Ms) and Another, , wherein it is held that, use of unfair means - the rules not making distinction between bona-fide and mala-fide possession of incriminating relevant materials as pointed by the enquiry Committee appointed by the Government. In the instant case, inference can be drawn that he or she had used unfair means and these are purely academic matters which should be thrashed out at the academic stage itself by the experts in the field. The manner in which the present scam has come to light is very unfortunate and has created an unhealthy atmosphere. If these things are entertained and permitted to go on, the faith and confidence reposed by the citizens on the system in which the examination is conducted will be lost. Keeping all these in mind, the Government has rightly passed the impugned order based on the report submitted by the three member Committee which is constituted under the relevant rules referred above.

8. In view of the facts and circumstances of the case, as stated above, I am of the considered view that, these petitioners have not made out any good grounds to grant interim order as prayed for. They are not entitled to seek for such a prayer at this stage. They are entitled to take all the defence they have pleaded in the writ petition by way of reply to the show cause notice. Instead of replying to the impugned show cause notices, they have rushed to this Court at the eleventh hour and presented the instant writ petitions seeking the aforesaid interim prayer. The same is not justifiable.

9. So far as the reliance placed by the learned senior counsel appearing for one of the petitioner, in my view, there is no dispute, second thought or quarrel regarding law laid down in the said judgments. But the facts and circumstances of the said cases are entirely different from the facts and circumstances of the case on hand. Hence, the ratio of law laid down in the judgments referred by petitioners cannot be made applicable at the stage of consideration of interim prayer sought for by these petitioners. Nor any assistance as such can be drawn from the same in support of the case of petitioners.

10. Having regard to the facts and circumstances of the case, as stated above, taking into consideration the totality of the case on hand, I do not find any good v grounds to consider the interim prayer sought for by the petitioners. Accordingly, the interim prayer sought for by them is rejected.

11. It is significant to note that, in the judgment relied upon by the learned Advocate General appearing for first respondent in respect of MDS entrance examination where no mal practice has been detected or has been committed by any of the candidates in the MD/MS examination in the centre at Chennai, the Apex Court has refused to grant the interim order, nor permitted them to participate in the ensuing counselling and excluded the students therein from the

merit list and directed to re-arrange the merit list. Whereas in the instant case, the Committee, as per the relevant provisions of the Act and Rules has been constituted and the said Committee, after thorough evaluation has submitted the report and given a specific finding that there are irregularities committed by these petitioners and these petitioners are the beneficiaries of mal practice. When the Apex Court itself has refused to grant the interim prayer in a case where the mal practice is not detected or committee has been constituted, it is not justifiable for this Court to grant the interim order in the instant case, where a Committee has been set up and a report has been submitted by it giving a specific finding that mal practice has taken place with the connivance of the top rank officials of the RGUHS. Therefore, viewed from any angle, petitioners have not made out any case for consideration of the interim prayer sought for by them.

12. It is further significant to note that, the mal practice has taken place at the post graduation level after completion of which these Doctors will be specialised in a particular field and deal with the life and death of human beings.

13. In view of the well settled principles of law laid down by the Apex Court in host of judgments, this Court cannot by its fiat direct the RGUHS and the State Government to disobey the statute and Rules to which they owe their existence and regulations and rules made by the statute itself. I cannot imagine anything more destructive of the rule of law than a direction by this Court to disobey the regulations and the laws. If the request of petitioners is considered, it results in very awkward situation and the rules stare straight into force of plea of sympathy and concession against the legal provisions.

14. Thus, when the Apex Court itself, has rejected the interim prayer in cases where the mal practice is yet to be detected, the petitioners herein are not entitled to any relief in the instant case where the Committee has been set up, report has been submitted and mal practice is detected. If such things are allowed to persist, then the faith and confidence reposed by public on the system and the doctors, who are treated next to god will be lost and the able and meritorious students will loose their morale.

15. Accordingly, the interim prayer sought for by petitioners is hereby rejected.