
(1988) 04 PAT CK 0025
In the Patna High Court
Case No : C.W.J.C. No. 805 of 1987 (R)

Dr. Surendra Nath Dwivedi and Others	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 14-04-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1989 Patna 132

Hon'ble Judges : S.B. Sanyal, J;B.P. Singh, J

Bench : Division Bench

Advocate : Prakash Kishore Prasad, for the Appellant; S.B. Gadodia, K.P. Mitra, M.Y. Eqbal and U.K. Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh, J.—The petitioners herein are doctors holding M.B.B.S. Degrees. They had appeared at the test known as the Post- Graduate Medical Admission Test (hereinafter to be referred to as the PGMAT) held by the respondents in the year 1986 being admitted to the Post-Graduate Course in Paediatrics. They failed to qualify for admission to the Post-Graduate Course and have filed the, instant writ application for declaring that the PGMAT held in the year 1986 was arbitrary, illegal, capricious and vitiated on account of the fact that more than 30% of the questions were either incorrect or vague or irregular or demonstrably wrong. It has also been averred that apart from wrong questions even the suggested answers were not correct and at times more than one answer was correct. They have, therefore, prayed that the respondents be prohibited from acting in furtherance of or pursuant to the said PGMAT held in the year 1986.

2. The facts of the case may, be briefly noticed. The petitioners claim to have acquired the M.B.B.S. degree and had also completed the required period of internship and house job for appearing at the PGMAT. The PGMAT is held for making admissions to the Post-Graduate Medical Courses at the various medical colleges of the State of Bihar. Post-Graduate Medical Courses are available in

various subjects including Paediatrics. The Post-Graduate Medical Courses in Paediatrics consist of a Degree course which is known as Doctor of Medicine, commonly known as MD and a Diploma course called Diploma in Child Health commonly known as DCH. The test is held every year and in the said test a separate answer-sheet is provided which contains a box against each question and the candidate has to tick-mark one put of the four or five suggested answers in the answer book which he considers to be the correct answer. According to the petitioners, the question paper itself states that only one answer was the correct answer. It is their case that the evaluation is done through computers which are fed with the correct answer for each question. The said correct answer is the one given by the paper-setter in the "key answer". The petitioners contend that based on evaluation of the answer papers, selection is made on the basis of merit by reference to the number of vacancies in a particular course. Persons securing higher marks are admitted to the Post Graduate Degree course, whereas those securing lesser marks are admitted to the Diploma course. This is done after an interview in which only the original documents are verified and no assessment of the candidate is made. The admission is really granted to the Post-Graduate courses on the basis of the performance in the written test.

3. The petitioners state that they had applied for the PGMAT 1986 giving their first choice as Paediatrics. They were issued roll numbers and they duly appeared at the examination held for the purpose on 20th April, 1987. The petitioners contend that the questions asked and the answers suggested were either wrong or meaningless, or were vague or irregular, or demonstrably wrong, and in some cases, none of the answers were correct, and in some cases more than one answer was correct. But in all such cases, only one correct answer had been fed into the computer and whoever gave that answer was awarded the marks for that answer, regardless of the fact whether he had rightly answered the question. The result was that where wrong answers fed into the computer, or more than one answer was the correct answer, candidates whose answers tallied with the answer fed in the computer were awarded marks for that answer, even though in reality the answer fed into the computer was not correct or the question admitted of more than one answer only one of which was fed into the computer. It was therefore submitted that the test that was held was not a test of the knowledge of the candidate concerned, since his performance depended not upon whether he answered the question correctly, but upon whether his answer tallied with the answer fed into the computer regardless of the fact that the answer so fed into the computer was not correct. The petitioners have referred to various questions and the answers suggested in the answer book. They have claimed to have done so on the basis of their memory as the question papers are not allowed to be taken out of the Examination Hall. It is not necessary at this stage to refer in detail to the questions reproduced by the petitioners and the various answers which according to them were suggested in the answer book, one of which was the correct answer. According to the petitioners it can be demonstrated that either the questions were meaningless or the answers were

wrong or that the question admitted of more than one correct answer but marks were awarded only for the answer fed into the computer.

4. A counter-affidavit has been filed on behalf of the respondents 1 to 4, namely, State of Bihar and the authorities concerned. It appears that pending disposal of the writ petition, the results of the PGMAT 1986 were announced and admissions to the Post-Graduate course in Paediatrics were made on the basis of the results. The petitioners therefore, filed an application on the 23rd of September, 1987 and prayed that the candidates who had been selected for admission be also made parties to the writ application. This application was allowed and, accordingly, respondents 5 to 28 were made parties to the writ application. Some of the added respondents have also filed a counter affidavit in reply to the writ application. The aforesaid respondents contend that the instant writ application ought to be dismissed since it is devoid of merit. Two similar writ applications filed earlier before the Patna High Court were dismissed being C.W.J.C. Nos. 2072 and 2109 of 1986. They, have annexed with their counter-affidavit the orders of this Court dated 6-5-1986 dismissing those writ applications. The respondents have also contended that the result of the examination cannot be quashed or set aside merely on the allegation that incorrect and meaningless questions were set in the examination. However, they have denied the allegation that the questions were either wrong or meaningless or that the answers suggested were incorrect or that any question admitted of more than one correct answer. These respondents have replied to each and every allegation made in the writ application in relation to the various questions and the suggested answers made by the petitioners in the writ application. They have contended that the questions were correctly set and the answers suggested admitted of only one correct answer. There was no ambiguity and there was no question of any answer being incorrect. They alleged that the petitioners are only interested in taking a chance by filing the instant writ application inasmuch as they also took a chance by appearing at the said test. Having failed to qualify, they are now interested in getting the examination set aside on hypothetical allegations. It is stated that the writ application is frivolous and mala fide. Referring to the four petitioners, it has been stated that petitioner 3 has been appearing in the PGMAT for the last four years but has not succeeded so far even after addition of service marks to the marks obtained in the written test. Similarly, petitioner No. 1 has been appearing in the PGMAT for the last two years but has not succeeded. Both these petitioners failed to get paid housemanship in the Department of Paediatrics at the Ranchi Medical College Hospital and, therefore, had to opt for honorary house-jobs. It is, therefore, quite obvious that even in the matter of selection for paid housemanship, these petitioners failed to qualify. Similar is the case with petitioner 4. So far as petitioner 2 is concerned, it is stated that he has also appeared at the PGMAT for the last 3-4 years but has not succeeded so far. All these go to show that the petitioners are not really meritorious, as they claim, but they have made false allegations in order to harass the successful candidates who have been selected for admission to Post-Graduate Course.

The contesting respondents have stated that the questions which the petitioners have set out in the writ petitioners from memory have not been correctly reproduced, nor have the answers been correctly reproduced. Moreover, it is not wholly correct to say that the question paper itself stated that there was only one correct answer to each question. As a matter of fact, in the question booklet, it is clearly stated that the candidate must "select the most appropriate response out of the given choices and there is only one most appropriate response for each question". It has been submitted that out of 4-5 choices given, the candidate is required to fill up only the correct choice no. in his answer book. In all cases there is only one most appropriate answer to the question asked and that answer has been taken to be the correct answer. These respondents have, thereafter, dealt with each and every question and answer to which reference has been made in the writ petition and have sought to demonstrate in the counter-affidavit that the allegations made by the petitioners are either false or incorrect or result of their misunderstanding. They have dealt with each and every question and demonstrated that there was only one correct answer to each question being the most appropriate answer to the question asked. In substance, the contesting respondents pleaded that the questions have been properly set and out of suggested answers only one is the most appropriate. There is, therefore, no fault in the setting of the paper for the test nor is there any irregularity or illegality in the matter of evaluation of the answer books.

5. Normally courts will be slow to enter into a controversy which relates to examinations or tests held for admitting students to specialised course. In the matter of examination, the University authorities must be trusted to hold the examinations in a fair and proper manner and interference by the court must be in the rarest of rare cases where the court is satisfied that the examination has been held in such a manner that it has resulted in arbitrary results so that the examination or the test held and the result declared has not resulted in the test of merit but has left much to the luck or chance of the candidates concerned. There are, however, exceptions to this rule and in exceptional circumstances courts have interfered to grant relief to meritorious candidates whose merit has been ignored because of improper setting of papers or incorrect answers declared in the key-answer. I may refer to two decisions of the Supreme Court of India on this question. In the case reported in Kanpur University and Others Vs. Samir Gupta and Others, , the question that arose for determination has been succinctly posed in the first part of the judgment of the learned Chief Justice as follows : --

"If a paper setter commits an error while indicating the correct answer to a question set by Him, can the students who answered that question correctly be failed for the reason that though their answer is correct, it does not tally with the answer sent by the paper setter to the University as the correct answer ?"

While considering the question, it was observed that none can accuse the teacher of not knowing the correct answer to the question set by him. But occasionally

not enough care is taken by the teachers to set questions which are free from ambiguity and to supply key answers which are correct beyond reasonable controversy. The court then considered the questions and the suggested answers and came to the conclusion that some of the answers given were demonstrably wrong. The Court observed that the key answer should be deemed to be correct unless it is proved to be wrong and that it should not be held to be wrong by a process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well versed in the particular subject would regard as correct. If there was a case of doubt, one would unquestionably prefer the key answer. But if the matter is beyond the realm of doubt it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong.

Having found that some of the answers were demonstrably incorrect, the court considered the question as to what relief could be granted to the concerned candidates. The High Court in that case had found that the respondents had not been awarded marks for the questions correctly answered by them though those answers were not in accord with the answers given by the paper setter in the key answer which were demonstrated to be wrong. The Supreme Court directed that they should be granted those marks and the answer books reassessed. It was not disputed in that case that if the answer books were reassessed the respondents would be entitled to be admitted to the M.B.B.S. course. In that view of the matter, the Supreme Court confirmed the directions given by the High Court in regard to the reassessment of the particular question and the admission of the respondents to the M.B.B.S. course.

6. Similar situation arose in the case reported in *Abhijit Sen and Others Vs. State of U.P. and Others*, . This was also a case where the key answer to one of the questions was demonstrated to be wrong. The court after noticing the judgment of the Supreme Court in *Kanpur University case* (supra) observed as follows :--

"Suffice it to say that this Court has expressed therein a clear and categorical view that it the "key answer"(i.e. the answer which the paper-setter has supplied to the University as the correct answer and which has been fed into the computer) is shown to be demonstrably wrong, that is to say, such as no reasonable body of men well versed in the particular subject would regard it as correct and if the answer given by a student is correct if regard be had to acknowledged text-books or books which the students were, expected to read and consult before appearing for the test it would be unfair to penalise the student for not giving an answer which accords with the "key-answer" that is to say with an answer which is demonstrated to be wrong."

After applying these principles, the court while considering the question as to the relief to be granted held that in a situation where both the answers namely one given by the candidate concerned as well as the key-answer supplied by the paper setter were found to be wrong with reference to the correct answer as

determined by the court, no relief could be granted to the concerned candidate. Applying that principle one of the appellants before the Supreme Court was denied any relief because even though the answer in the key-answer supplied by the paper setter was found to be wrong, since the answer given by the appellant was also wrong. He, therefore, could not get any relief. Another student, however, who had given the correct answer which was not in accord with the answer given in the key-answer, was granted relief because the key answer was found to be demonstrably in-correct.

7. The principle that emerges from these two decisions is that if the key answer is shown to be demonstrably wrong, and the answer given by the student concerned is correct, the student concerned should not be penalised for not giving an answer which accords with the key-answer, that is to say, with an answer which is demonstrated to be wrong. In the matter of grant of relief, the student concerned must establish his claim to the grant of more marks and it would not be enough to show that some of the answers were demonstrably wrong. He has further to establish that in his answer book though he had given the correct answer, no marks were awarded and the answer was treated to be incorrect. If the answer given by him was also wrong, he could get no benefit from the mere fact that the key-answer was wrong.

8. In the instant case, several questions and suggested answers have been set out by the petitioners in the writ application. We asked learned counsel appearing on behalf of the petitioners to choose any one of the questions which best demonstrated the incorrectness of either the question asked or the answer suggested. Learned counsel for the petitioners submitted that the question which he had mentioned in paragraph 19 sub-para A of the writ petition was the best illustration which established the allegations made by the petitioners. The aforesaid paragraph reads as under : --

"A. Goal of Immunisation up to 1990 is all of the following except one : --

1. to immunise all the pregnant women with Tet vac.
2. D.P.T. - 85%.
3. B.C.G. - 80%.
4. Oral Polio - 85%.
5. Measles - 75%.

According to J. E. Park, in his Text book of Preventive and Social Medicine, at page 265 -- "The goal of E.P.I. (expanded programme of immunisation) is to protect all children of the world against six diseases, measles, polio, tuberculosis, diphtheria pertussis and Tetanus -- by 1990".

The said author in his book at page 602 also says as follows :--

"EPI in India is part of the Worldwide programme of WHO to protect all children

against six diseases, viz., Diphtheria, Whooping cough, Tetanus, Tuberculosis, Polio and Measles by the year 1990."

Therefore as the question goes, only one choice should have been incorrect but choices Nos. 2, 3, 4, 5 are incorrect. Thus a candidate who writes either 2, 3, 4 and 5 in the box is giving the correct answer. But since the computer has been fed with only one answer, the candidate who does not give the only answer fed into the computer, does not get any marks although his answer is correct."

9. In the counter-affidavit the contesting respondents have stated that the question has not been correctly set out in the writ petition. The correct question did not mention the goal of immunisation up to 1990 but referred to the "target of immunisation by the year 1990". According to them, there were only four choices given in the answer book and choice No. 4 as mentioned in the writ petition was not actually in the answer book. This averment categorically made by the contesting respondents has not been controverted by the petitioners. Moreover, the contention of the contesting respondents also appears to be correct. The question asked was with regard to the target of immunisation by the year 1990" and it was mentioned that of the four suggested answers, one was incorrect. From a perusal of the question it appears that a certain percentage has been mentioned after each of the diseases mentioned. Obviously, therefore, the target was suggested in the four choices given in the answer book and the percentage mentioned after each disease was the said target. The candidates had, therefore, to find out which of the targets mentioned was incorrect. According to the contesting respondents, the correct answer was the 4th choice since according to the target of immunisation as published by the Registrar General of India, polio immunisation target by 1990 is 70% and not 85% as suggested in choice No. 4 of the answer.

It appears that the petitioners did not even understand the question. According to them, choices Nos. 2, 3, 4 and 5 are incorrect and, therefore, the candidate could have given any one of them as the answer. This is stated on the observations made by G. E. Park in his Text Book of Preventive and Social Medicine. I have carefully considered the observation of the learned Author but there is nothing in those observations which shows as to what is the "target" fixed for immunisation by the year 1990 in respect of various diseases. The learned Author has only mentioned that the goal of expanded programme of immunisation is to protect all children of the world against six diseases, namely, measles, polio, tuberculosis, diphtheria, pertussis and tetanus. These are general observations with regard to the immunisation programme in India but there is nothing in the passage quoted which mentions about the target fixed in terms of percentage. It is, therefore, patent that the petitioners completely failed to appreciate that the percentages mentioned against various diseases suggested in the answer, represented the target sought to be achieved by the year 1990, and one of the targets expressed in terms of percentage was incorrect. They had to pick out that answer. I, therefore, find nothing wrong in either the question set

or the suggested answers. On the other hand, I am satisfied that the contesting respondents have correctly set out the position in their counter-affidavit. There is, therefore, nothing demonstrably wrong either in the question or in the answers suggested.

10. Faced with this situation, it was contended that the petitioners could not produce the question paper and the key-answers since the key answers were not made available to them and the question papers were not allowed to be carried outside the examination hall. It was, therefore, submitted that the court should require the authorities to produce the question paper as well as the key-answer sheet. The petitioners could then demonstrate what other mistakes are there either in the questions or in the suggested answers. I do not think this course can be followed. If such a course is followed, it would completely destroy the sanctity of the examination. In every case the examination may be challenged on the mere allegation that if the question papers and the key-answer sheet are produced it can be shown that the answers are demonstrably wrong or that the questions are improperly set. It would amount to opening the flood-gates to such challenges, and will result in courts embarking upon a roving enquiry which will serve no useful purpose whatsoever. The matter can only be examined if the petitioners could produce material before the court to establish *prima facie* that there is some serious illegality which warrants further investigation by the court, and may be in an appropriate case, depending upon the facts and circumstances of the case, such a course may have to be followed. I am of the considered view that the instant case is not one in which there is any justification for calling upon the authorities to produce the question paper and the key-answer sheet. I am not satisfied that even *prima facie*, the petitioners have been able to establish that the answers mentioned as the correct answers in the key-answers are demonstrably false. Even the questions set have not been shown to be either ambiguous or incorrect. On the other hand, I have no doubt that the petitioners apprehended all this not because the questions have not been properly set or the answers have not been correctly given in the key answers, but because the petitioners have failed even to understand the questions, and consequently have not appreciated what was required of them while giving their answers. The facts have disclosed not only their poor knowledge but also poor understanding. It is for this reason that we had requested the learned counsel to select the best illustration and if the best illustration has not satisfied me, I do not consider it necessary to consider the other questions and answers which are referred to in the writ petition. Moreover, it would be a dangerous exercise to test the correctness of questions and answers relating to a subject of higher speciality on the basis of questions and answers reproduced in the writ petition from memory, which have also been demonstrated to be incorrectly reproduced. Apart from any other reason, it would be hazardous to embark upon an exercise on such unreliable material. The petitioners have relied upon a judgment reported in *Amalendu Santra Vs. University of Calcutta and Others*, . In view of the findings recorded by me earlier, I do not find that there is anything in this judgment

which supports the case of the petitioners.

11. I, therefore, find no justification for any interference by this Court. I am not satisfied that there is anything demonstrably wrong either in the questions set or the suggested answers. The petitioners have utterly failed to bring their case within the scope and ambit of the principles laid down by the Supreme Court of India in the two cases to which reference has been made earlier. Even otherwise I find no justification for granting any relief to the petitioners. They have nowhere stated in their writ application as to what were the answers given by them for which they were entitled to marks which were denied to them. In the absence of such particulars, even if it was found that the answers given were demonstrably wrong, the petitioners would not be entitled to any relief.

12. In the result, this writ application is dismissed. There will be no order as to costs.

S.B. Sanyal, J.

13. I agree.