

(1999) 10 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16688 of 1999

G. Satish Kumar

APPELLANT

Vs

Convenor, ECET (FDH-99), JNTUC College and another

RESPONDENT

Date of Decision : 30-10-1999

Acts Referred:

Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 — Section 15, 3
Constitution of India, 1950 — Article 14
Engineering Common Entrance Test Rules — Regulation 4.4
Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 — Regulation 104(3)

Citation : (2000) 1 ALD 413 : (2000) 2 ALT 256

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. P. Udayabhaskara Rao, for the Appellant; Mr. T.S. Hari Nath, SC for ECET, Mr. K. Ramesh Babu, SC for APSCE and Government Pleader for Higher Education, for the Respondent

Judgement

1. The petitioner is a Diploma Holder. He appeared for Engineering Common Entrance Test ECET (FDH) 99. The said common entrance test is conducted for admission to a short term Engineering course specially meant for Diploma Holders like the petitioner. The petitioner has secured the rank 183. He was also admitted in the Engineering College in Warangal District. He is challenging the action of the respondents viz., Andhra Pradesh State Council of Higher Education and the Convenor, ECET (FDH) 99, JNTU College, Kukatpalli, Hyderabad, in not entertaining the application of the petitioner for retotalling/personal verification as violative of Article 14 of the Constitution of India. The learned Counsel for the petitioner has raised only ground on the touch-stone of equality clause in Article 14 of the Constitution. He has made a two fold submission. First, he submits that the JNTU is the nodal authority for conducting entrance test for Engineering Courses meant for Diploma holders as well as conducting entrance test for Agriculture, Medical and Engineering Courses, better known by its cognomen

"EAMCET-99" in Andhra Pradesh. Therefore, he submits that when EAMCET Rules issued in G.O. Ms. No. 184, Education dated 20-8-1993 in exercise of the powers u/s 3 read with Section 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (hereafter called the Act) provide for personal identification and retotalling on payment of Rs.500/-, there is no reason why such a rule is conspicuous by its absence in ECET (FDH) 99 Rules. The relevant rule in EAMCET Rules (i.e.,) XI. 1 reads as follows:

"Evaluation : Every care will be taken to avoid errors in the evaluation, checking, scrutiny, tabulation and ranking. Request for verification of response sheet shall be entertained on payment of Rs.500/-(Rs.200/- in case of SC/ST candidates) within, 15 days from the date of announcement of the results. In case of change of rank, the amount shall be refunded. Personal identification of OMR response sheet shall not be entertained."

It is true that similar rule is very conspicuous by its absence in the ECET (FDH) 99 Rules. This, according to the petitioner, is discriminatory. Elaborating further, Sri Udaya Bhaskar Rao, the learned Counsel for the petitioner submits that when the authority for conducting the common entrance test for the two courses is the same, there cannot be discrimination. The Rules are made by the Government of Andhra Pradesh in exercise of its powers u/s 3 read with Section 15 of the Act. Therefore, when two sets of rules are made, not conferring the same benefit of seeking revaluation/retotalling/personal verification is discriminatory. The learned Counsel has invited the attention of this Court to Regulation 4.4 of the ECET Rules which reads as follows:

"Every care will be taken to avoid errors in valuation, checking, scrutiny, tabulation and ranking. Hence request for retotalling, revaluation or personal identification of scripts will in no case be entertained. Candidates will be ranked in the order of merit in the ECET (FDH) 99 separately in each branch of Engineering course."

According to the learned Counsel, this is discriminatory and violates the principles of equality in Article 14 of the Constitution. I have heard the learned Counsel for the petitioner and the learned Counsel Kum. T. Jayanthi, representing Mr. T.S. Haranath (not present).

2. The students who seek admission either in Engineering or Medical course after intermediate are a separate class in contra distinction to the Engineering Diploma Holders who are entitled to appear in ECET examination. They are being two different distinct classes, it is always permissible for the rule making authority to provide for two different set of rules. The fact that for the year 1999 the nodal authority for conducting the two entrance tests is the Convenor of JNT University does not, in any way, dilute this principle. It is just a coincidence that this year the JNTU is made the nodal authority for conducting both the entrance tests. The rationality and the reasonableness of such a rule in EAMCET can as well be

appreciated. The students who appear for EAMCET-99 are of tender age who have just passed Intermediate examination. Therefore, the rule making authority thought it fit to provide for verification of response sheet only on payment of Rs.500/- within 15 days from the date of announcement of the results. However, the rule making authority in the case of Engineering Diploma Holders qualified to appear in ECET examination thought it fit to omit it. It is not the case of the petitioner that the ECET rules are ultra-vires the Act. When this position is admitted, the wisdom or otherwise of not providing for revaluation/retotalling/personal identification in the ECET examination is beyond the purview of the Court of judicial review. On this, this Court is well supported by the dictum of the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, . Their Lordships of the Supreme Court while dealing with similar question of Regulation 104(3) of Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 held as follows:

"Regulation 104(3) of the Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 is not in the nature of bye-law. It is not ultravires on the ground of its being an unreasonable provision. The regulations made by the Board u/s 36 are in the nature of statutory rules and they have the full vigour and force of subordinate Legislation made by a delegate duly empowered in that behalf by the legislature....It is in public interest that the results of public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and revaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc., of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process.

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 the departments controlling them....."

3. The provisions of Rule 37(1) and (2) of the Rules framed by the Administration of Goa, Daman and Diu under Goa, Daman and Diu Secondary and Higher Secondary Education Board Act which prohibited inspection and/or revaluation of answer books was challenged before the Panaji Bench of the High Court of Bombay. Following the judgment of the Bombay High Court in Paritosh Bhupeshkumar Sheth and Others etc. Vs. The Maharashtra State Board of Secondary and Higher Secondary Education, Pune and Another, , the Panaji Bench of the High Court of Bombay declared the provisions of clauses (1) and (2) of Rule 37 of the Rules as ultra vires and invalid in so far as the rule prohibited revaluation/inspection of answer papers. The matter came up before the Supreme Court in Goa, Daman and Diu Board of Secondary Education Vs. Kumari

Hema Laad and Others, . The Supreme Court following the judgment in Paritosh Bhupeshkumar Sheth's case (supra) allowed the appeal filed by the Government of Goa.

4. Therefore, when the Rules did not specifically provide for revaluation/ retotalling/personal identification, it is not within the purview of the power of judicial review of this Court to direct the authorities to revalue the ECET answer scripts. The same would amount to making rules for doing which this Court suffers from lack of jurisdiction.

5. In view of this, I see no merit in the writ petition.

6. The writ petition, is therefore, dismissed with costs quantified at Rs.500/-.