
(2017) 03 KAR CK 0062

In the Karnataka High Court

Case No : Writ Petition No. 5226 of 2017 (EDN-RES)

Hemanth

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227

Citation : (2017) 3 KantLJ 236

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Smt. Suman Hegde, Advocate, for the Petitioner; Sri A.G. Shivanna, Additional Advocate General along with Sri H.T. Narendra Prasad, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. S. Sujatha, J.—The petitioners have challenged the order/letter dated 7-12-2016 regarding change of earlier system/pattern of question papers of 10th Standard for the forthcoming Exams of 2017.

2. Petitioners are studying in X Standard in different Schools. It is contended, the 2nd respondent has designed a new pattern of question papers for forthcoming Examination scheduled to be held from 30th March, 2017. The different pattern of question paper now set up by the 2nd respondent is made known to the students only in the fag end of the academic year.

3. The learned Counsel Smt. Suman Hegde, appearing for the petitioners would contend that the present system of the existing booklet that comprises both the questions and answer script has been changed over to a new system all of a sudden, without consulting any head of the educational institutions, Teachers, parents or any experts in the concerned field. Any change for the good is always acceptable provided it is made known to the students in the beginning of the academic year. Students/parents were oblivious of the new system. Introducing

the new pattern of question paper at this point of time would not only cause hardship to the students, it is a burden to the State Exchequer.

4. Learned Counsel further submitted that the petitioners have written their preparatory examination in the months of January and February 2017 as per old system and are well-acquainted with the existing pattern of objective questions with the answer sheets in one booklet. The change in the system would drastically affect the students. It was further contended that, the unilateral decision taken by the Board sans any Regulation or Rules to that effect is arbitrary exercise of power. No model question papers as regards the new pattern were supplied to the Institutions well in time to prepare the students to write the examination in the new pattern. The students being not well-equipped with the proposed new pattern of question paper are losing confidence to write the examination.

5. It is further contended that Right to Education is a fundamental right envisaged under the Constitution of India. Disturbing the pattern of question paper in the fag end of the academic year would violate the fundamental right guaranteed under the Constitution. Lakhs of students are appearing for the Examination. The interest of the students is to be safeguarded by the Courts setting aside the arbitrary exercise of the Board.

6. Per contra, learned Additional Advocate General Sri A.G. Shivanna submitted that the Board has taken a decision in the interest of the students to bifurcate the question paper and the answer booklet. Indeed, by experience it was noticed that the storage of the question-cum-answer booklet in the Treasury, where the storage place is less was difficult, otherwise it was prone to leakage. The question paper leakage is a very serious problem and this should be handled carefully. The question paper and the answer booklet together was bulky to handle and was difficult for the printer to print in secrecy and store all these question-cum-answer booklets in the Treasury.

7. The learned Additional Advocate General contended that there is no change in the pattern, design and format of the question paper absolutely, Neither the students nor the school authorities would face any difficulty with the question papers now set up. The Board has announced the timetable for the March 2017 Examination on 2-12-2016. At the same time, it was also informed to Deputy Director of Public Instructions to inform all the Headmasters and Teachers in school regarding the setting up of the question papers. The blue print prepared according to the weightage given to the lessons is the same as last year. The only difference is, the students instead of writing the answers in question-cum-answer booklet will now write the answers in answer booklet.

8. It was further submitted that the e-tender for printing of answer scripts was floated on 5-12-2016 and L1 bidder was also identified and the work order issued, the work of printing of answer booklet and additional sheets completed. An approximate amount of Rupees six crores has already been spent on printing

of separate question papers and answer booklets. The Admission Tickets along with centre nominal rolls are dispatched to the schools and around 8,77,000 students are prepared for examination all over the State. The present set of separate question paper and answer booklets, in fact, is more beneficial to the students, as they can carry the question papers and do self-evaluation on the same day.

9. The learned Counsel placing reliance on the judgment of the Hon'ble Apex Court in the case of *Sunil Kumar and Others v. Bihar Public Service Commission and Others* (2016) 2 SCC 495, would contend that holding of public examinations involving wide and varied subjects/discipline is a complex task. Preparing the question papers, evaluation of answer papers and issuance of appropriate directions to Evaluators should be left to the expert bodies in the field.

10. Heard the learned Counsel for the parties and perused the material on record.

11. At the outset, I have examined the old pattern of the question paper-cum-answer booklet as per Annexure-R1 and the Model Question Paper for the Examination of 2017 as per Annexures-R2 and R3. The only difference between the two set of papers is, the old pattern was question paper-cum-answer booklet. But the Model Question Paper for 2017 is, with the question paper separated from the answer booklet. No other difference is found in the two sets of papers. Prima facie, it appears that there is no change in the design of the question papers. The leakage of question paper is a big menace in the society which requires to be curbed taking all precautionary measures. It is imperative to maintain secrecy and confidentiality at every stage, commencing from setting up of the question paper till it reaches the students at the time of examination. The whole process requires adequate equipment, infrastructure and time. It is the experience of the Board which has to be given paramount consideration for conducting the Examinations. Examination is a mode to assess the skill/ability/knowledge acquired by the student during the said academic year based on the Course syllabus. No doubt this has to be conducted adhering to the Rules and Regulations of the Board. It is true that, the Model Question Paper of a particular academic year has to be made known to the Students and the Teachers in order to prepare them for the Examinations. The change in the question paper now set up by the Board ought to have been announced in the beginning of the academic year. Any change made to the pattern of question papers at the fag end of the academic year would affect the students to a certain extent. What is the magnitude of change is relevant, to examine the grievance of the petitioners. As could be seen, the comparative study of the two sets of question papers at Annexures-R1, R2 and R3 do not disclose any major change in the new system of setting up the question papers, except, bifurcating the question paper from the answer booklet. In the earlier pattern, a box was provided for answering certain questions whereas more space is now available for the students to answer the same questions in the answer booklet.

12. The reasons for the change assigned by the Board in its statement of

objections filed and the arguments advanced at the hands of the learned Additional Advocate General makes it clear that it is for maintaining the sacrosanct value of the question paper, the change was necessary. The voluminous composite booklet with the question paper and answer sheet is rather difficult to manage compared to the separate question paper.

13. At this juncture, it is apt to refer to the judgment of the Hon^{ble} Apex Court in the case of All India Council for Technical Education v. Surinder Kumar Dhawan and Others AIR 2009 SC 2322, at paragraphs 12 and 13, which reads thus:

"12..... The Courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the Courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realising the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.

13The role of statutory expert bodies on education and role of Courts are well-defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the Courts keep their hands off."

14. The same view is reaffirmed in the case of Sunil Kumar and Others supra, wherein it is held thus:

"20. We cannot understand the law to be imposing the requirement of adoption of moderation to a particular kind of examination and scaling to others. Both are, at best, opinions, exercise of which requires an in-depth consideration of questions that are more suitable for the experts in the field. Holding of public examinations involving wide and varied subjects/disciplines is a complex task which defies an instant solution by adoption of any singular process or by a straitjacket formula. Not only examiner variations and variation in award of marks in different subjects are issues to be answered, there are several other questions that also may require to be dealt with. Variation in the strictness of the questions set in a multidisciplinary examination format is one such fine issue that was coincidentally noticed in Sanjay Singh and Another v. Uttar Pradesh Public Service Commission, Allahabad and Another, (2007)3 SCC 720. A conscious choice of a discipline or a subject by a candidate at the time of his entry to the University thereby restricting his choice of papers in a public examination; the standards of inter subject evaluation of answer papers and issuance of appropriate directions to evaluators in different subjects are all relevant areas of consideration. All such questions and, may be, several others not identified herein are required to be considered, which questions, by their very nature should be left to the expert bodies in the field, including, the Public Service Commissions. The fact that such bodies including the Commissions have erred or

have acted in less than a responsible manner in the past cannot be a reason for a free exercise of the judicial power which by its very nature will have to be understood to be, normally, limited to instances of arbitrary or mala fide exercise of power."

15. In the light of these judgments, it can be held that setting up/framing of question papers lies within the domain of the expert bodies constituted for the said purpose. Ordinarily, Courts must refrain from interfering and adjudicating in the setting up of question papers. The principal contention of the petitioners is that, any change in the pattern of question papers has to be decided at the earliest and Model Question Papers should be issued at the beginning of the academic year. There is no cavil on this proposition. Nonetheless, the petitioners also approached this Court at the fag end, more particularly, when the Examinations are scheduled to be commenced from 30th March, 2017. As contended by the Board, 8,77,000 students are given with Admission Tickets all over the State. Rupees six crores is already spent on printing of question paper booklets and answer sheet booklet, after following the due process of calling of tenders and printing of question papers. A circular dated 7-12-2016 was issued to prepare the Students for the forthcoming Examination of 2017 with the new change. Tire Model of Blank Answer Booklet is also made available on KSEEB Website "www.kseeb.kar.nic.in".

16. Given the circumstances, interfering with the decision of the Board to conduct the Examination as per the question papers now set up is wholly unjustifiable. An action is said to be arbitrary and capricious when the Board does any action against the prescribed Rules, procedure or law or if it is found to prejudice or preference something whimsical without any reasonable explanation. No such arbitrariness and capriciousness is pointed out by the petitioners, except the delay aspect. When change is for the good to achieve a specific objective in furtherance of education in a bona fide manner, it cannot be construed as violation of fundamental rights guaranteed under the Constitution.

17. After hearing of the matter, learned Additional Advocate General brought to the notice of this Court on 8-3-2017, before pronouncement of the judgment, the order of this Court in the case of Prabhu Adi v. Shree Tanveer Sait and Others W.P. No. 65569 of 2016, dated 23-1-2017

18. I have perused the Division Bench judgment in Prabhu Adi's case (supra). The Division Bench has categorically held that there is no legal infirmity found in the new examination writing system of SSLC Examination commencing from March 2017, to warrant interference under the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and the writ petition is accordingly dismissed.

19. The views expressed by this Court in the preceding paragraphs is supported by the Division Bench judgment in Prabhu Adi's case (supra).

20. As regards the Court fee, learned Counsel for the petitioners after hearing

the petition before the pronouncement of judgment, has brought to the notice of this Court the Division Bench judgment in the case of *Ananthapadmanabhaiah v. The Tahsildar* ILR 1991 Kar. 503 (DB), to contend that Single Court fee is payable irrespective of the number of petitioners in terms of Rule 7(2) of the High Court of Karnataka Writ Proceedings Rules, 1977.

21. In the said judgment referred to above, their Lordships were considering a case of sole petitioner, who had several mortgages in his favour which were considered by the Executive Magistrate under the Karnataka Debt Relief Act, 1976, and a common order was passed. The petitioner had challenged the same in the writ petition. In that context, it was held that it would be open to the petitioner to include several cause of action in one petition and in that event it would not be necessary for him to pay separate Court fee on each cause of action. The same is not applicable to the facts of the present case in view of 34 petitioners filing a single petition before this Court.

22. In the case of *K.L E. Society's College of Pharmacy v. State of Karnataka and Others* 1996(6) Kar. L.J. 622, it is held thus:

" Even though the institution has filed a single petition which can be maintainable that the beneficiaries are separate and therefore separate Court fees have to be paid. The ultimate beneficiaries are the students, they have to pay the individual Court fees merely because the cause of action has been amalgamated and represented by the institution, the complexion of the matter cannot be altered. This Court has consistently taken the view that the ultimate test to be applied is as to who are the aggrieved parties? But more importantly as to who would be the ultimate beneficiary of the orders or directions which the Court issues. In keeping with the answer to these questions in all these cases, even if the students are represented by the institution and a single petition is maintained separate Court fees have been directed to be paid. Consequently, petitioners shall tender the deficit Court fees to the office of this Court within four weeks from today, whereupon this petition which is treated as a single writ petition shall be renumbered and treated as a group of 71 petitions."

23. In view of the said judgment, it can be held that the ultimate beneficiaries of the order being the petitioners, even if a single petition is filed, separate Court fees are to be paid. The requisite Court fee being not paid, the petitioners shall tender deficit Court fee to the office of this Court forthwith, whereupon, the petition shall be renumbered and treated as group of 34 petitions.

24. For the foregoing reasons, writ petition stands dismissed as devoid of merits.

25. It is needless to mention that 2nd respondent-Board shall take all decisions inasmuch as setting up the question papers in the beginning of the academic year so that the unnecessary confusion can be avoided.