

(1992) 04 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3275 of 1991

Ku. Sapna Alia

APPELLANT

Vs

Vyavasaik Pariksha Mandal and Another

RESPONDENT

Date of Decision : 06-04-1992

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1993 MP 68 : (1993) 38 MPLJ 312 : (1993) MPLJ 312

Hon'ble Judges : S.K. Seth, J;S.K. Chawla, J

Bench : Division Bench

Advocate : Rajendra Tiwari, for the Appellant; S.L. Saxena, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

S.K. Chawla, J.

An unsuccessful candidate in PMT Examination has filed this writ petition in a bid to get admission in M.B.B.S. Course.

The petitioner is Ku. Sapna Alia. She had appeared in July 1991 in PMT Examination conducted by respondent No. 1, Professional Examination Board, M.P., Bhopal (hereinafter referred to as "the Board"). It is the petitioner's case that in September 1991, she came to know from Marks Sheet, Annexure P-1, supplied to her, that she had been disqualified in Zoology paper and no marks were for that reason assigned to her. This had greatly reduced her merit, which was evident from the fact that she had secured 274 out of 300 marks in Physics and 279 out of 300 marks in Chemistry. She had secured 142 out of 300 marks in English. Her performance in Botany paper was however low because she had given that paper in a condition of running fever. In that paper, she had secured 79 out of 300 marks. Even so, her overall performance was that she had secured more than 50% of total marks, making her qualified for admission to medical education. But because she was disqualified in Zoology paper, her merit was

lowered to such an extent that she could not secure the necessary position entitling her to get admission.

It is further the case of the petitioner that her disqualification in Zoology paper was absolutely unjustified and arbitrary. The disqualification, to her guess, was done because she had allegedly used two inks in marking that paper with an ulterior motive, as wrongly thought by the Board, to disclose her identity. The fact of the matter was that while she was marking her Zoology paper by means of a dot-pen, the refill of that pen suddenly got unserviceable. She had to therefore use another dot-pen, which she was carrying at that time. The result was that some of the markings in the paper were faint while the remaining were more discernible. But there was absolutely no mala fide on her part. Her application to the Board made on 12-9-1991, Annexure P-3, requesting for removal of her disqualification, remained unresponded. Hence the present petition brought on 19-9-1991.

In the return filed on behalf of respondent No. 1 Board, the disqualification of the petitioner in Zoology paper was sought to be justified by recourse to Instruction/ Rule No. 2.5 contained in Chapter II of the Booklet, which is supplied to candidates along with the examination forms. That rule is in Hindi. The entirety of that rule is not relevant. The extract thereof is as follows :

^^2-5 mRrj dSlS vafdr djuk %

xxx xxx xxx

2 & ?kl fpUg ds fu''kku dsoy dkyh vFkok uhyh L;kgh ls gh cukuk vko'';d gSA fdlh Hkh vU; jax dh L;kgh vFkok isafly ls cus gq, fu''kku feyus ij Nk= dks v;ksX; ekudj ''kwU; vad iznku fd, tk;saxsA

3 & nks vyx & vyx vkdkj ds fpUg vFkok nks izdkj dh L;kgh iz;ksx djus ij Hkh v;ksX; ?kksf''kr dj ''kwU; vad fn, tkosxsaA**

It will be seen that the said rule provides that cross-marks in the answer sheet shall be made only in blue or black ink. It is also provided that if any other ink is used or pencil used to make the markings, the candidate shall be disqualified and would be awarded zero mark. It is also provided that if two inks are used by the candidate, then also he shall be disqualified and awarded zero mark. It is the contention of the Board that candidates when filling in the examination forms are supposed to go through the Booklet containing Instruction/ Rules including the above instruction/ rule; otherwise they have to only thank themselves. The petitioner had used two inks of blue and black in colour in making markings in Zoology paper. She had thus contravened Instruction/ Rules 2.5 and was therefore properly disqualified.

We called for the original answer sheet of Zoology paper of the petitioner for our perusal. We must say that it is difficult at first look to discern that markings in that paper have been made in two inks. The impression one gets is that there is difference, if at all, only in the shade of the same colour of the ink in the paper.

It is only on a closer look and in view of the uncontested position that two inks were used, that one comes to know that they are two colours of blue and black. The fact that the two colours are blue and black is important. These closely resemble each other and are the two permitted variety of colours that may be used in making the markings according to the rule. Had the petitioner used two colours in contrast, the matter would have been different. It could have then been said that the petitioner had indulged in malpractice in order to get her answer-sheet singled out and identified. But that was not the case here. Without closer scrutiny of the paper, as already stated, it appears that markings are in the same ink with the only difference that some of the markings are faint and some are more discernible or with the difference that some of the markings are, as it were, in royal blue ink and some in dark blue ink. The answer sheet for that reason has not at all become identifiable. There is nothing to show that the version of the petitioner that she was compelled to use two dot-pens, in the circumstances described by her, is false. There is bound to be slight difference in the colour of the two re-fills. The difference in the colours was however of the permitted variety and no mala fide could be imputed to the petitioner. The argument advanced on behalf of the Board that the very fact that the petitioner went into the examination hall with two dot-pens disclosed her mala fide, has to be mentioned only to be rejected.

The mark-sheet, Annexure P-1, supplied to the petitioner was not improperly highlighted by her counsel to found an argument that the petitioner was a brilliant student. She had secured almost super marks both in Physics and Chemistry. She had secured 274 and 279 marks in that order, out of 300 marks in each of these papers. Where was the need, it was argued, for such a brilliant student to resort to any kind of malpractice?

We also noticed, though on our own, that the answer sheet in question of the petitioner, contains what it describes "Important Instructions" which are printed and are for perusal of the candidates in the examination hall. Those instructions are printed in Hindi as well as in English. It will be proper to reproduce only the English. Instructions, which are as follows :

"IMPORTANT INSTRUCTIONS

Write your Roll No. Name etc. on this answer-sheet only in the allotted space.

Mark or cancel your answer as per method of indicating or cancelling the answer.

Writing, making any marks or doing rough work anywhere on front or back side of the answer sheet is totally prohibited.

If the candidate does not comply with the above instructions, as per rule his examination of all subjects will be cancelled."

It will be seen that Instruction/ Rule 2.5 given in the Booklet supplied to the candidates at the time of filling up of the examination forms, which was so much relied upon by the Board to justify disqualification of the petitioner's paper, is

missing in the above printed "Important Instruction", meant to be read by the candidates in the examination Hall soon before starting to mark the answer sheets. It may be said that instruction No. 3 of those printed instructions somewhat resembles Rule 2.5., inasmuch as it is also designed at checking any practice that may lead to identification of the paper. It says "Writing, making any marks or doing rough work anywhere on front or backside of the answer sheet is totally prohibited." But that instruction speaks of no two inks, much less about further details stated in Instruction/ Rule No. 2.5., was the candidate not entitled to assume that printed instructions appearing on the answer sheet were the only ones to be followed, in so far as the immediate task of marking the papers was concerned ? Was the candidate expected to re-call at that time the instructions which he had read in a Booklet running into several pages of printed matter, and to further assume that those instructions in the Booklet not before him, were in addition to the instructions printed on the answer sheet, before him ? In case the candidate had not minutely read the instructions contained in the Booklet or did not properly re-call them, was the candidate to "thank himself, as mentioned in the return of the Board ? Was it not improper in the circumstances to punish a candidate, in the position of the petitioner, just because he/she felt compelled to use, as stated by the petitioner, two dot-pens of slightly different colours but at the same time of the permitted variety of colours ?

For all the foregoing reasons, we are clearly of the view that the act of decision of the Board in cancelling the Zoology paper of the petitioner by disqualifying her in the paper, was, to say the least, arbitrary and bereft of any reason, whereby the petitioner was unjustly discriminated against, in violation of Article 14 of the Constitution. We accordingly set aside the petitioner's disqualification in that paper. That paper shall be immediately sent back to the Board in a sealed cover. We further direct that the Board shall arrange to get that paper properly valued, within three weeks from the date of this order. The petitioner's merit shall then be re-determined after taking into consideration the marks secured by her in that paper. We further direct that if as a result of re-determination of her merit, the petitioner is entitled to get admission in the M.B.B.S., the same shall be given to her without any further loss of time, despite the delay which has been occasioned, for which the petitioner can hardly be blamed. No order as to costs.