

(1998) 09 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition No's. 22309, 26099, 26120, 26484, 26507-509 and 272478 of 1998

Kum. Babitha Nugala

APPELLANT

Vs

Common Entrance Test Cell, Govt. of Karnataka and Another

RESPONDENT

Date of Decision : 25-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 Kar 183

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : P.S. Rajagopal and A.S. Jayachandra, A.S. Jayachandra Associates, K. Lakshminaryan, Shekar Shetty and M.T. Nanaiah, for the Appellant; K.L. Manjunath and N.K. Ramesh, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Tirath S. Thakur, J.—Sixteen candidates hailing from different parts of the Country chose Government Pre-University College for Boys at Koppal for taking the entrance test conducted by the Common Entrance Test Cell. All the 16 were allotted consecutive CET Registration Nos. from RR 113 to RR 128. In the examination Centre designated for the purpose, these 16 students were allotted Room No. 8 from where fifteen out of them took the test on 13th and 14th of June 1998. While the result of test conducted at nearly 250 different centres all over the State was announced on 14th of July 1998 that of candidates who appeared from Room No. 8 of Koppal Centre was withheld. Aggrieved by the non-declaration of their results, some of the candidates, filed W.P. Nos. 21797-800/1998 and connected matters in this Court, in which the CET Cell appeared to justify the withholding of the results on the ground that the candidates concerned had indulged in mass-copying. The CET Cell proposed to hold an enquiry into the allegations of mal-practice on the basis of a show cause notice, which was issued to each one of the candidates. The petitioners were accordingly given time to file their reply to the show cause notices with a

direction to the Special Officer of the Cell to expedite the enquiry and issue orders in accordance with law. Consequently, an enquiry was conducted by the Special Officer, who has by his order dated 26th of August 1998 annulled the examination taken by all the 15 students including the petitioners herein from the Koppal test centre. The direction proceeds on a finding recorded by the Special Officer to the effect that the delinquent candidates had indulged in mal-practice in the course of the test. Aggrieved, the petitioners have filed these Petitions challenging the validity of the said order.

2. Counsel appearing for the petitioners strenuously contended that the petitioners had not committed any mal-practice nor was there any documentary or other evidence to support the conclusion drawn by the Special Officer. They urged that the finding recorded by the Special Officer was based on conjectures and surmises and that the same was in the absence of any supportive evidence perverse and unsustainable in law. The order was also challenged on the ground of violation of the principles of natural justice, inasmuch as the enquiry officer had not provided to the petitioners an opportunity to cross-examine Sri Renuka Murthy, Principal of Government Pre-University College, Thyamagondlu, whose report had set the entire process in motion.

3. Mr. Manjunath, Counsel appearing for the respondents, on the other hand, submitted that the enquiry had fully established the guilt of the candidates including the petitioners and that the finding returned by the Special Officer was based on clinching circumstantial evidence, which irresistibly leads to the conclusion that those who have appeared in the test from Room No. 8 of the test centre at Koppal had indulged in mass-copying. He urged that the enquiry conducted by the Special Officer or the order passed on the basis whereof did not suffer from any legal infirmity nor were the principles of natural justice violated as alleged.

4. The Special Officer has in support of his conclusion primarily relied upon three circumstances. Firstly, he found that students assigned to Room No. 8 in the Koppal test centre belonged to different parts of the Country including the State of Karnataka, who had no ostensible reason to choose Koppal as their examination centre keeping in view the fact that other centres were more convenient for each one of them being nearer to the places of their permanent abode. The Special Officer was of the view that candidates permanently residing at Bangalore, Hassan and Bidar in the State of Karnataka had chosen the test centre at Koppal only in furtherance of a conspiracy to indulge in mass-copying in that centre.

5. The second circumstance, which the Special Officer relied upon was that most of the candidates, who had appeared in Room No. 8 of the centre at Koppal were average or below average students, some of whom had taken years to pass the qualifying examination. Reference in this regard was made to the performance of these candidates in the qualifying examination besides relying upon the previous attempts made by some of them, in which they had failed. The Special Officer

felt that the academic calibre of these candidates was totally incompatible with the kind of performance they had registered in the entrance test, thereby probablising in a large measure the theory of mass-copying.

6. The third and the most significant out of the circumstances, which the Special Officer relied upon was the similarity in the performance of the candidates, who appeared in the test from Room No. 8 of the centre. The close resemblance and the striking but unusual similarity in the marks secured by the candidates was taken as a clear indication of the candidates having taken help from a common source while attempting the question papers.

7. That each one of the circumstances mentioned above and relied upon by the Special Officer is a relevant circumstance cannot and has not been disputed. The only question therefore is whether the conclusion arrived at by the Special Officer on the basis of these circumstances can be said to be so patently erroneous as to be considered preverse. Now it is true that a co-incidence like people from different parts of the Country or the State of Karnataka choosing Koppal as a centre may not in itself be of much significance if there was no other circumstance suggestive of any mischief like the use of unfair means in the examination. Just because candidates from different parts of the Country or the State for their own reasons of convenience, comfort or such other considerations chose a particular place for taking a competitive examination may not in itself constitute an incriminating circumstance. Such a situation may come about innocently and for no better reason than sheer co-incidence. But any such circumstances may assume considerable importance in the company of other circumstances, or incriminating evidence supporting the allegation of a misdemeanor like mass-copying in the instant case. Similarly the fact that a candidate had performed poorly in the qualifying examination may be no reason for holding that he could not have done better in a competitive test especially one of an objective type as in the instant case. Correlation of the performance of a candidate in the qualifying examination with that in the competitive test taken by him/her may be permissible and relevant but cannot be conclusive of the matter. Here again, the comparison between the two performances may only be corroborative in nature depending upon other supportive evidence or circumstances. What is however not explainable is the similarity in the performance of the candidates, who appeared in the test from Room No. 8. A perusal of the comparative statement set out in the impugned order would show that in Physics, each one of the candidates, who took the examination from Room No. 8 scored between 30 and 37.5 marks. In Chemistry, each one of those, who appeared from that room scored between 52 and 60 marks. Similarly in the case of Biology, each one of the candidates, who appeared in the test from Room No. 8 of the centre scored between 41.75 and 50 marks. Even this striking similarity or consistent performance of all those, who appeared in the examination from Koppal may have been ignored as something normal, if those who appeared in the very next room had a similar score to their credit. The Special Officer has drawn up the list of those, who appeared in the examination

in the other room of the centre at Koppal. A glance at the performances of the candidates in all the 4 subjects is both interesting and revealing. In Physics, the candidates have scored between 0 and 27.5. In Chemistry, the candidates have scored between 6.25 and 34. In Biology, the students have scored between 6 and 45.75. It is significant to note that in more of these subjects, is there an award repeated except between those, who have scored zero in Physics. There are 3 candidates, who have scored zero marks in Physics. But for that similarity, there is not a single other candidate, who has scored the same marks as any other candidate out of the 37 candidates, who appeared in the other room at Koppal. When this is compared with the performance of candidates huddled in Room No. 8, it is evident that there are 6 out of 15 candidates, who have all scored 35 out of 60 marks. There are 4 candidates, who have scored 36.25 marks out of 60. The remaining 5 have also scored between 30 and 33.75. Similarly in Chemistry, there are 6 candidates, who have scored 57.5 out of 60. Three have scored 58.75 while three others have scored 56.25 out of 60. One of them viz., Anjanprabhu K, has scored 60 out of 60 even though in his qualifying examination he has scored 36 out of 100. This is true even in respect of Biology, where the highest marks awarded are to Basavaraj C S who has scored 50 out of 60. The striking dissimilarity in the pattern of performance between those, who appeared in Room No. 8 and others who appeared from the adjacent room in that centre has not been and cannot be explained except on the basis that candidates in Room No. 8 had an advantage available to them, which was common to all, while those in the adjacent room were deprived of the same. Superadded to all this is the fact that the performance of some of these candidates, who are by no means the very best candidates keeping in view their performance in the qualifying examination when compared with the performance of the first 10 toppers in the CET examination does not support the theory of innocence propounded by the Counsel appearing for them.

8. In Chemistry, the candidate who has topped the CET Examination has scored only 56.5 out of a total of 60 marks as against Anjan Prabhu K., one of the candidates from Room No. 8 in Koppal Centre who has scored 60 out of 60. None of the other rank holders out of the first 10 except one has scored cent percent marks in Chemistry. Most of the rank holders have scored between 51.5 and 58.75. In comparison all candidates from Koppal Centre have scored above 55 marks except one who has scored 52.5 Similarly, in Biology also the pattern of performance of candidates from Koppal Centre is totally incompatible with the performance of the first 10 rank holders who have scored between 45.5 with 57.5 marks out of 60. Suffice it to say that all these circumstances relied upon by the Special Officer having been established in the course of the enquiry conducted by him, when taken cumulatively were sufficient to sustain the finding recorded by him. The fact that there is no ocular evidence, in support of the charge of unfair means, did not make any material difference for men lie but circumstances do not. They may in fact speak more eloquently than an eye witness to the incident. So long as the circumstances relied upon were

conclusively established and so long as they do not leave any missing link in the chain, it was permissible for a quasi judicial authority to record a finding on the basis thereof. The correctness of any such finding, cannot be questioned on the ground of insufficiency of evidence. It is only in cases where the conclusion is in such outrageous defiance of logic that no reasonable person could have arrived at the same time that a writ Court may be justified in interfering with a finding of fact. The present is not indeed one of such cases, for even if this Court were to reappraise the evidence a conclusion different from the one recorded by the Special Officer may not have, been possible.

9. Reliance upon the recent decision of the Supreme Court in, *Rajesh Kumar v. Institute of Engineers (India)* AIR 1998 SC 5 : (AIR 1997 SCW 3946), is of little assistance to the petitioners. That was a case where the candidates had been accused of copying even when the seating arrangement made it impossible for them to copy from each others answer script. The students had explained the similarity in the answers on the ground that they had crammed the same from a common book. The competent authority had subjected the candidates to a cramming test and found that the same did not support the explanation given by the candidates. It was in that background that their lordships held the exercise to be bad. Similarity in answers from a common source like a book does-not, declared the Court, establish any connection between a conspiracy to use unfair means and the answers given by the candidates. The following passages is in this regard apposite at Page 7 (of AIR):--

"All literate men have been students at a given point of time but all have not been crammers. Those who cram do not achieve their goal by a single reading. It is a ceaseless effort for days and days till the desired result is achieved. Crammers inter se do not have any nexus with each other. The text of a book as the common source for cramming establishes no connection. That per-se cannot be evidence of any conspiracy between the crammers to adopt unfair means in the examination unless there be material to show that there was copying of the answer books, defended from the answer book of one of the candidates, or directly from the book leading to the copying by others."

10. It was next argued that some of the petitioners had shown good results even in the qualifying examination and scored high percentage of marks in the same. It was contended by Mr. Rajagopal that petitioner Kumari Babita Muggala, had done well in the qualifying examination and scored a first class. He submitted that if there were candidates in the hall who had any outside assistance, for attempting the question papers the same did not justify the inference that even the petitioner was guilty of using unfair means. That however is not the correct angle from which the whole incident has to be viewed. The real question is whether the sanctity of the examination was maintained for the authorities to recognise the same. It is not a case where some of the students appearing in the examination are accused of using unfairness, it is a case where the entire examination is found to have been vitiated by the candidates indulging in mass-

copying. That being so, it is difficult to find each one of the candidates independently guilty of any specific act amounting to unfair means nor indeed was it necessary to do so keeping in view the nature of the allegations made. If the students indulge in mass-copying in an Examination Centre, the only course open to the examining authority is to annul the examination as a whole. It is too much to expect the examining body to identify the role or the kind of unfair means used by each one of the candidates who benefited from any such mass-copying. The performance of some of the petitioners in the qualifying examination notwithstanding the examination having been affected by mass-copying, there was no option for the authority except to cancel the examination in toto.

11. It was then contended by Mr. Rajagopal that the enquiry conducted by the Special Officer was not fair inasmuch as no opportunity was granted to the petitioners to cross-examine Sri Renuka Murthy, the Principal of the Government Pre-University College, Thyamagondlu. The said Officer was not admittedly an eye witness, although he was appointed as a Route Officer, who had delivered the question papers and answer sheet to the examination centre and collected scripts on the concluding day of the examination. The affidavit of the said Officer, a copy whereof was delivered to the petitioners along with the show cause notice stated that he had over-heard some people discussing about the manner in which the Entrance Test was held at Koppal Centre. The affidavit disclosed that those discussing the incident had suggested involvement of candidates from outside Koppal, the Invigilators and the Principal of the College. It may have been necessary to subject Renuka Murthy to cross examination and a denial of the opportunity to do so may have affected the validity of the enquiry had the Special Officer placed any reliance upon the said affidavit while arriving at his conclusion. The affidavit and the report submitted by the Officer simply set into motion the process of verification of the facts culminating in the conduct of the enquiry and the making of the impugned order. The enquiry-conducted revealed that what was heard by Sri Renuka Murthy, was not just street gossip but a fact. The circumstance discovered in the course of the enquiry, supported the veracity of the allegations and stand by themselves and independent of what Renuka Murthy had stated in his affidavit. Denial of opportunity to cross examine Renuka Murthy is not therefore significant and does not vitiate the enquiry or the order made on the basis thereof.

12. M/s. Naniah and Basava Prabhu Patil, appearing for some of the petitioners, argued that the Special Officer had no jurisdiction to conduct an enquiry or pass the impugned order. They urged that the Rules on the subject did not empower the Special Officer to act in a matter like this or to pass an order annulling the examination. There is no substance in the submission either. Firstly, because the petitioners had at no stage in the earlier round of litigation in which the Special Officer was directed to conduct an enquiry raised the contention now urged on their behalf. Having taken a chance to obtain a favourable order from the Special Officer and having failed in that attempt the petitioners cannot turn round and

question the competence of the Officer to conduct the enquiry. The petitioners having acquiesced in the proceedings are estopped from challenging the competence of the Special Officer. It would therefore be permissible for this Court to decline interference on the principle stated in the Division Bench decision of this Court in, C.Y. Parthasarathy Vs. Syndicate of the Mysore University, , where in an almost similar situation. I had speaking for the Bench observed thus:--

19. It is true, that jurisdiction cannot be conferred by consent, of the parties where it does not otherwise inhere in the authority concerned; but it is equally true that the High Court can while exercising its extraordinary and discretionary powers under Article 226 of the Constitution decline to interfere with an order of a subordinate authority if it is satisfied that an objection relating to a defect of procedure or jurisdiction which would have been and ought to have been raised at the earliest opportunity was not so raised by the party complaining before it. The Rule that acquiescence of the party belatedly making a grievance about the jurisdiction of the subordinate authority disentitles him to invoke the Writ jurisdiction of the High Court, does not rest on the foundation that acquiescence, confers jurisdiction but on the rationale that the High Court will be justified in refusing to exercise its jurisdiction in favour of a person who has either by reason of lack of diligence or by design remained on the fence, allowed the authority to pass an order and seeing that the same has gone against him turned round to challenge its competence, to have done so.

20. In any such situation, it would be reasonable to infer that the party making the grievance about the competence of the subordinate authority, acted unfairly in not raising the objection at the very outset; it would also be reasonable to assume that he did so, deliberately hoping that the final order to be passed by the authority would be in his favour, but finding it go against him, he attacks the same as being without jurisdiction. In other words the person concerned indulges in what may be termed as "diluted deception" by keeping quite, when he was, in fairness to all those concerned with the proceedings before the authority, under an obligation to speak out. He attempts by his silence to secure a favourable verdict, which if given, would have buried for ever the question of competence of the authority to handle the subject-matter. It is this trickery which the Courts have frowned upon by declining to interfere with the actions of subordinate authorities, where acquiescence or acceptance of their jurisdiction is manifested by the facts of a given case."

13. Secondly the Special Officer is the Member Secretary of the Common Entrance Test Committee constituted under Rule 11 of the, Karnataka Selection of Candidates for Admission to Engineering, Medical and Dental Courses, Rules, 1997. Sub-rule (4) of Rule 11 provides that the Member-Secretary shall take directions from the Chairman and the Government in discharging his duties in connection with the Entrance Test and makes the Member Secretary responsible for arranging the matters stipulated therein. A reading of Sub-clauses (a) to (h)

of Rule 11 (4) would show that the conduct of the examination and matters relating thereto have been entrusted to the Special Officer. The nature of the duties broadly described under Sub-rule (4) of Rule 11 should, in my opinion, include any proceedings that may become necessary on account of the use of unfair means or mass-copying by the candidates appearing in any centre. That is especially when there is no other authority designated by the Rules for holding any such enquiries and passing orders.

14. Mr. Patil next argued that if the examination conducted by the CET had been vitiated on account of mass-copying no individual candidate could be held responsible for the same. It is also possible that the situation which resulted in the examination losing its sanctity was created by some only of those appearing in the same. It was urged that identification and separation of the cases of such undesirable elements may be a difficult in most cases, involving mass-copying, but depriving those, who are innocent of an opportunity to appear in a fresh examination would be unfair and unjust. There is substance in that submission. If an examination is cancelled on account of mass-copying, it may not necessarily mean that each one of the candidates had indulged in copying. There may in an examination hall affected by mass-copying still be some who did not copy while most of the others were doing so. But, it is difficult for the authorities to identify candidates, who have indulged in copying from those who have not. In any such situation, there is no question of punishing any candidate for no specific case of unfair means is registered against any one of them. Yet the entire examination is vitiated and the best way to handle the same is to cancel it in toto. A fresh examination for such candidates would be necessary to ensure that such of them as may not have been in any way responsible for the failure of the system do not get punished for the activities of others. The question however is whether the second examination can, in a case like the present, be permitted to prevent injustice to those, who claim to be innocent. My answer is in the negative. I say so because the examination conducted by the CET Cell and the allotment of seats in various categories based on the results obtained therein is a continuous and composite process. If a second examination were to be held, it would mean that the process of counselling and the admission of thousands of candidates, who have appeared shall have to wait till such time a fresh examination is conducted and the results announced. Even that may have been possible if only counselling had not started and admission not made. Unfortunately, for the petitioners, the process of counselling has already begun and the available seats have already been offered to the candidates in the preliminary round. Even the final admission round is also in progress. It is therefore difficult at this stage to conduct a fresh examination and direct the consideration of the petitioners based on the result of the same. The system prescribed for allotment of seats and the scheme underlying the Rules do not, in my opinion, permit consideration of candidates at the admission stage unless such candidates are assigned a proper rank in the overall merit list and seats offered to them according to their merit in the preliminary round of counselling. Assuming therefore that any one of the

petitioners or others, who appeared in the test from Koppal test centre had remained wholly innocent and unaffected by the mass-copying that took place in that centre, yet no worthwhile directions for remedying the situations can at this stage be issued to help them. A direction for a fresh examination and for consideration of the cases of the petitioners based on the result thereof shall create serious problems and confusion to the prejudice of those who have already been counseled for allotment of seats. The petitioners have therefore to take their chances in the next academic session only or seek admissions against unutilised seats if and when they are transferred to the managements for being filled up.

15. Before parting, I must observe that the Special Officer has in the course of his order repeatedly suggested the existence of what he has described as a "Crime Syndicate" and "Education Mafia." He has referred to certain circumstances to show that what happened at Koppal was a part of the larger game plan of the Mafia. I do not however find any conclusive documentary or circumstantial evidence to support the conclusion that the incident is the handiwork of any Mafia or Crime Syndicate, but if the authorities have any information or inkling about any such illegal activities, it is high time for them to take stern action in the matter in the interest of keeping the stream of selection process pure and unpolluted. The respondents must ensure that those within the official machinery without whose co-operation and connivance the Mafia and Syndicates cannot prove effective are also identified and purged from the system. Proceedings started against the officials concerned who were responsible for what happened in Koppal should be expedited and the matter taken to their logical conclusion without loss of time. The CET would also do well to pursue the matter with the authorities at the appropriate level.

16. With the above observations, these Petitions fail and are hereby dismissed but in the circumstances, without any orders as to costs.