

(2011) 06 DEL CK 0066

In the Delhi High Court

Case No : Writ Petition (C) No. 8340 of 2010

Manish and Others

APPELLANT

Vs

Guru Gobind Singh Indraprastha University and Another

RESPONDENT

Date of Decision : 03-06-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 46

Citation : (2011) 06 DEL CK 0066

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Pawan Upadhyay, for the Appellant; Mukul Talwar, for the University college and Lalit Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By these petitions filed under Article 226 of the Constitution of India, the Petitioners seek direction to direct the Respondents to hold re-examination of "Physiology" paper through some independent agency.

2. Brief sequence of events necessitating the filing of the present petitions are that all the Petitioners took admission with Respondent No. 2 hospital in MBBS course in different academic years and all the students either belong to SC, ST or OBC category and from the category of central pool but the common grievance raised by the Petitioners is that they have been failing in the paper of Physiology of the Ist year even after repeated attempts. The Petitioners have further stated that all the students who had failed in the main examination appeared in the supplementary examination of 2010, and only 11 students passed the supplementary examination, but still 25 of them had failed and even those who have passed had secured just passing marks. The Petitioners have also stated that so far the students who took admission in the Army College of Medical Science are concerned, they had all passed in the supplementary examination. It is also the case of the Petitioners that the answer sheets were not evaluated by the external examiners but only by the internal examiners carrying out the facile

exercise by randomly checking one answer sheet or the other. It is also the case of the Petitioners that they had made various representations to the concerned authorities but despite assurance given by such authorities, nothing could come out of them.

3. Mr. Pawan Upadhyay, learned Counsel appearing for the Petitioners submitted that since all the candidates who had appeared in the supplementary examination belonged to the reserved category only, therefore, the coding of the examination roll numbers by itself would not support the stand taken by the Respondent that the examiner would not come to know that a particular student belongs to the reserved category. Counsel also submitted that in fact the Respondent-college had been manipulating the marks of the students belonging to the reserved category. Counsel also invited attention of this Court to the reply dated 9th March, 2011 sent by the college under the RTI application filed by the Petitioners wherein the college had admitted that error was committed by them in recording the marks of the candidate Rajeev Kr. Meena in his internal assessment for October, 2010. Counsel also submitted that the said Committee constituted by the Vice Chancellor did not afford any personal hearing to all these students who were in a better position to explain their grievances. Counsel further submitted that if the Respondents are so confident that the said examination was evaluated in a fair and transparent manner then they should not shy away from getting the evaluation of the said answer sheets of all these Petitioners done through some independent examiner.

4. Mr. Mukul Talwar, learned Counsel appearing for the Respondent-University submitted that pursuant to the directions given by this Court vide order dated 22.12.2010, the Vice Chancellor of the Respondent-University had constituted a Committee to look into the grievance of the Petitioners contending that they have repeatedly been failed in the Physiology examination due to class discrimination. Counsel further submitted that the said Committee comprised of the Dean, University School of Medical and Para-Medical Sciences, two subject experts of Physiology and an officer of the examination branch of the University. Drawing attention of this Court to the Minutes of the said Committee; counsel submitted that the said Committee did not find any merit to suggest any extraneous reasons or any bias or discrimination for failure or poor performance of the said students who are not getting success in the said examination of Physiology; and the marking of the students in the said paper is fair and objective. The committee further found that there is a strong in-built mechanism to ensure fairness in the system of evaluation through the process of mixing copies of examinees and coding their examination scripts, the counsel submitted. Mr. Talwar also invited attention of this Court to the result of these students who have repeatedly been failed in the said examination and pointed out that in all, the said subject carried total marks of 200, out of which 140 marks are allocated to theory and 60 marks for practical. Counsel further submitted that none of these students could secure passing marks in theory and practical and, therefore, they could not qualify the said examination. Counsel also pointed out

that the students were being assigned appropriate marks in the practical examination and had there been any class discrimination then they would not have been given the appropriate marks in the practical examination. Counsel thus submitted that this Court would not go into the disputed questions of facts in the exercise of writ jurisdiction. Counsel also submitted that the matter is also pending consideration before the National Commission for Scheduled Castes and Scheduled Tribes where the Respondent-University is already appearing and contesting the proceedings.

5. Mr. Lalit Kumar, learned Counsel appearing for the Respondent No. 2-college submitted that a student is required to secure passing marks in both theory as well as in practical examination. Counsel also supported the argument of Mr. Talwar that there is absolutely strong in-built mechanism to evaluate the papers and No. examiner can know which answer sheet belongs to which student. Explaining the process, counsel submitted that the Physiology paper is divided into four parts, for three hours on two different dates. Counsel further explained that on the first day, the student will appear in part-I and part-II and on the second day part-III and part-IV of the same subject. Counsel also submitted that after the examination the answer sheets are sent to the examination branch of the Respondent-University and all the four answer sheets are allocated different code numbers. Counsel also submitted that after assigning code numbers to these answer sheets the same are sent to the examiners appointed by the University. Counsel also submitted that every year the answer sheets of the supplementary exams go to different examiners and after checking the answer sheets, the same are submitted to the University and then the University compiles the result of the particular paper and then the result is declared. Counsel thus submitted that the mechanism is absolutely fool proof and hence there is No. room for any unfairness or any question of class discrimination. Counsel also submitted that so far 2009 supplementary examination of the said subject is concerned, two examiners themselves belonged to the reserved category. Counsel also submitted that out of 35 candidates who had appeared in the supplementary examination, only 3 have failed in the practical examination while 32 have qualified which fact would again show that had there been any class discrimination, then these students at least could not have passed the practical exam.

6. I have heard learned Counsel for the parties and given my serious consideration to the arguments advanced by them.

7. Vide order dated 22.12.2010, this Court directed the Vice Chancellor of the Respondent-University to consider the representation of the Petitioners and to report the matter to this Court as the issue raised by the Petitioners involves factual controversies. Pursuant to the directions given by this Court, the Vice Chancellor of the Respondent University constituted a committee comprising of four experts out of whom, two were the subject experts in the field of Physiology. The said committee after carrying out the evaluation of the answer sheets and

the pattern of the examination did not find any material to suggest any extraneous reasons, bias or element of class discrimination which could result in failure or poor performance of some students of the University in Physiology paper. It would be appropriate to reproduce the observations made by the said committee as under:

The meeting of the Committee constituted by Hon"ble Vice Chancellor to look into the grievances of the students of Vardhman Medical College and Safdarjung Hospital was held on 20th January 2011 in the Examinations Division of GGSIPU, Kashmere Gate Campus. The Committee comprised of four persons including two subject experts of Physiology. Officer-in-Charge dealing with M.B.B.S. in the examinations Division presented all the relevant documents including the answer scripts of Physiology I & II to the committee. The Committee assessed the pattern of examination system of M.B.B.S and the evaluated answer scripts. The Committee also perused the statement of marks for internal examinations. On perusal and consideration of all relevant documents and records including evaluated answer scripts the Committee observed the following.

1. The committee appreciated the broad based and fair evaluation system for the M.B.B.S. examinations. The committee noted that there are strong inbuilt mechanism to ensure fairness and objectivity in the system of evaluation in the form of blind evaluation, mixing of copies of all examinees and coding of the examination scripts.
2. The committee noted that the evaluation is so broad based and coded that one or two people cannot influence the result of an examinee for any malafide or extraneous reasons.
3. They looked at the pattern of marking of examinees in various components of Physiology papers. They noted that the students have relatively poor performance in both Sections of Physiology II than other components. The marking pattern in internal examinations carrying 20% weightage does not show any element of an effort bias or discrimination.
4. The failure of certain students in general seems to be for the reasons of poor performance in Physiology II. Two of the expert members who are experts in Physiology randomly looked at the evaluated answer scripts. It was noted that the marking of both sections of Physiology II was objective and No. malafide could be attributed for poor performance.
5. The members observed significant difference in performance levels of Physiology I and II. They noted that it was because of difference in the difficulty level of the papers. The syllabus of Physiology II includes Nervous System and Endocrine System which require much higher levels of understanding, knowledge, comprehension and preparation than Physiology I or Anatomy or Biochemistry. The poor performance in general in Physiology II vis-?-vis Physiology I and other papers like Anatomy and Biochemistry may be for this reason than any extraneous reasons.

6. The expert members of the committee noted that medical profession deals with the life and death of the persons, where in the court of Almighty No. grace and leniency is admissible for a professional failure of a medical practitioner. The subject of Physiology being the foundation stone of medicine, No. grace may be suggested just for passing the students who do not perform well.

7. The committee concluded that it did not find any material to suggest any extraneous reason or any bias or discrimination for failure or poor performance of some of the students of the University in Physiology paper of M.B.B.S. course. The marking of the students in the said paper being fair and objective, it does not recommend any measure to pass the students.

With the above findings given by the experts, nothing more is required to be probed in the matter and that too in exercise of the writ jurisdiction especially when the issues raised involve factual controversies. It is a settled legal position that the courts should not sit over the findings given by the experts and the courts would not substitute its own view for the view of the experts.

8. The Petitioners have raised the issue of class bias as these Petitioners are getting repeatedly failed in one subject paper i.e. Physiology. As per the Petitioners, the said subject is comparatively easy whereas as per the stand of the Respondent, this subject is a little bit difficult. Irrespective of whether the subject is easy or difficult, every student necessarily has to clear the same and mere failure of a number of students belonging to any category cannot lead to an inference that they are being discriminated due to some class bias or discrimination. No. specific allegations have been leveled by the Petitioners as on whose behest and on what ground the Petitioners are being discriminated resulting into their repeated failure in the said paper. As per the Respondent, the Petitioners failed in the External Theory Examination Part II of the Physiology paper and there is a strong in-built mechanism to ensure fairness in the system of evaluation through the process of mixing of the answer sheets after assigning distinctive codes to the answer sheets. It is thus the stand of the Respondents that the examiners who check such answer sheets cannot in any manner come to know as to which answer sheet belongs to which student. The Respondent No. 2 has pointed out that even in the supplementary examination conducted in October, 2010, one internal examiner and one external examiner belonged to SC category. It is also pointed out by the Respondent No. 1 that some of the Petitioners have taken up eight attempts but still they have not been successful in passing the said paper. Another interesting fact that was brought to the notice of the court was that these Petitioners in comparison have fared well in their internal assessment in comparison to their securing marks in theory Part II Physiology paper.

9. I find there is a complete and rational justification given by the Respondent that to ensure that No. student gets affected by any devious mind set of any examiner, 20% of the marks have been allocated for the internal assessment in the total evaluation. Undeniably, the possibility of discrimination cannot be totally

ruled out in the internal examinations where the internal examiner may have some preconceived notions against any class, however, that is not the case here as all these Petitioners have failed in their part II Physiology paper repeatedly which is an external examination. Although, counsel for the Petitioners vehemently refuted the contentions raised by the counsel for the Respondent that the answer sheets of the Petitioners through blind evaluations cannot be identified as all these Petitioners belong to the reserved category or from the central pool and therefore, not only their roll numbers fell in the same serial but it is also undeniable fact that all these students alone had been appearing in the supplementary examinations in the said paper, therefore, it was not difficult for the Respondent to identify these Petitioners even after adoption of the said system of blind evaluation. Counsel for the Petitioner also strongly placed reliance on the report given by the Forum of Rights and Equality, AIIMS wherein they have given suggestion that there is a need of thorough enquiry on the charges of casteism and callousness made by these students. Counsel for the Petitioner also took a stand that there are No. failures in the said Physiology subject so far the students of Army College of Medical Sciences are concerned, since the said college does not follow the reservation policy.

10. As already discussed above, for making out a case of class discrimination, the allegations leveled by the students must be clear, specific and unambiguous and not just giving vague and obscure hints. Repeated failure of the same students in the same subject certainly can cause frustration to such students, more particularly when the students of other colleges, whether belonging to general or reserved category are clearing the said exam in Physiology paper. But the moot question is whether in the absence of any specific allegations or any material placed on record by the Petitioners, can the Court accede to the allegation of class discrimination as made out by the Petitioners merely because of their repeated failure in the same subject. It is also difficult to accept the report of a private forum i.e. Forum of Rights and Equality, AIIMS in the face of the report of the expert committee constituted by the Vice Chancellor which comprises of four members i.e. Dean, University School of Medical and Para-Medical Sciences, two subject experts of Physiology and an officer of the examination branch of the University.

11. The contention of the learned Counsel for the Petitioners that one of the Petitioners had failed eight times in the said exam would not lead to an inference that he is a victim of class discrimination. Even the reliance placed by the counsel for the Petitioners on the information received under the RTI in respect of the Petitioner No. 16 Rajiv Kumar Meena intimating that there was some typographical error while entering his marks in the internal assessment in OMR Sheet would also not help the case of the Petitioners to draw the said inference of class discrimination.

12. Article 14 of the Constitution of India prohibits any kind of discrimination against any citizen by the State on the ground of religion, race, cast, place of

birth or any of them. The dictionary meaning of "discriminate against" is making adverse distinction with regard to or to distinguish unfavorably from others. Article 46 of the Constitution of India which finds place in Part IV of the Constitution dealing with Directive Principles of State Policy envisages that the State shall promote special care the educational and economical interest of the weaker sections of the people and in particular of the scheduled castes and the scheduled tribes and shall also protect them from social injustice and all forms of exploitation. It is not the case of the Petitioners that the Respondents have framed any policy, rule or Regulation which has the effect of discriminating the Petitioners who belong to the reserved category. The case of the Petitioners is that despite various attempts made by them they are not able to clear exam in one paper i.e. Physiology Part II and there cannot be any other cause for such repeated failure of the Petitioners except that they are the victims of class discrimination. It is very difficult to accept such a proposition as it is totally illogical and irrational, more particularly when the mechanism of checking the answer sheets of the examinees is such which cannot be tinkered with to target a particular set of students. Having said that, the court does not mean to turn a blind eye to the reality; the cases of class discrimination or caste bias are prevalent, be it in the academic institutions or at workplace. More often than not, it is difficult to find a direct evidence of cast discrimination, but wherever anybody complains of such cast bias or class discrimination, there has to be some potent evidence to support the same, or at least some circumstances clear by indicating of such class or cast discrimination.

13. Reservations were introduced for the backward classes in the institutes of higher learning like engineering and medical colleges with the objective that the social discrimination of the past which has led to educational backwardness could be mitigated. Aimed at making the less privileged realize their true potential by removing the barriers of class, this goal of a fair society cannot be achieved if these classes nurse the grudge of being discriminated against even after given opportunities. Class discrimination has undoubtedly been a sensitive issue responsible for historical moments, political turmoil, watershed legislations and landmark rulings in this country. But with the advancement of the country and social transformation, the societal mindset has indeed undergone a paradigm shift and to still read into failures as the emanation of prejudice would be like perpetuating the misgivings of the yore instead of eradicating them. The demons of discrimination have haunted the past of this country and nobody can be allowed to use it as a weapon to justify their being unsuccessful. It is a caveat launched to the students that they should look at facts more dispassionately so that the future of educational enhancement is not impaired by mythical dogma, but only illuminated by excellence.

14. In the light of the above discussion, this Court does not find any merit in the present petitions and the same are accordingly dismissed.

15. However, this Court is of the considered view that the Respondent should in

all earnestness ensure that the Petitioners are given some extra coaching classes by the faculty of Department of Physiology so as to fully prepare them to clear their supplementary examination in the said paper, so that these students may not harbour any feeling that they are less deserving or lack the caliber to qualify the said Physiology paper in any manner. The Respondent shall also ensure that effective steps are taken by them to ensure fair and foolproof evaluation of answer sheets of the Petitioners after they appear in the said examination.