
(1999) 11 AHC CK 0114
In the Allahabad High Court
Case No : C.M.W.P. No. 37374 of 1999

Nidhi Singh

APPELLANT

Vs

Chairman, C.P.M.T. 99, Roorkee and others

RESPONDENT

Date of Decision : 16-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2000 All 122 : (2000) 2 AWC 908

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Surendra Pratap Singh and W.H. Khan, for the Appellant; S.C Dinesh Kakkar and Ashutosh Sriwastava, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Garg, J.—Km. Nidhi Singh, a resident of Allahabad appeared in Combined Pre-Medical Test, 1999 (for Short "CPMT") conducted by University of Roorkee. Roorkee. An admit card was issued to her bearing Roll No. 511694. She appeared on 11.7.1999 at St. Fidelis College, Vikas Nagar, P.O. Vishnupuri Colony. Church Road, Lucknow, which was her centre for CPMT. She was unsuccessful as per result declared by the respondent No. 1.

2. The case of the petitioner is that she had obtained 489 marks while the candidates, belonging to the general category and obtaining minimum 462 marks, have been called for counselling, which had commenced from 5.9.1999 for admission to M.B.B.S. 1st year course. According to the petitioner, though she was entitled for counselling and admission in the M.B.B.S. 1st Year course, the respondent No. 1 Chairman CPMT-99, CPMT, Examination Centre. University of Roorkee, Roorkee, has issued a letter dated 14/16.8.1999 cancelling her test for the alleged adoption of unfair means. For the better appreciation and understanding of the case, the grounds specified in the aforesaid letter are reproduced below :

"Whereas you appeared vide Roll No. 511654 from St. Fidelis College. Vikas Nagar, Lucknow (Centre of Examination) for the CPMT, 1999 held on 11.7.1999.

Whereas during the process of evaluation of your OMR Answer Sheet, it was detected that you have deliberately adopted unfair means with an intention to get undue advantage under a well planned conspiracy.

Whereas you have initially entered the correct number of Question Booklet No. in both the papers (Paper I and II) issued to you in fact, on your answer OMR sheets respectively, but after it was initialled by the invigilators in the examination room, you have changed the booklet numbers on the OMR answer sheets and thus the actual code number printed on the question booklets issued to you do not match with the number you have written on the OMR sheet.

Whereas you were in fact issued the Question Booklet No. A 711249199 R (as acknowledged by you on the front page of the aforesaid Question Booklet) you have written another Booklet No. A 7112194599 R on your answer sheet in the column provided for it, which was never issued to you in Paper I. This has been done by you with mala fide intention.

Similarly, whereas you were in fact issued the Question Booklet No. A 711249199 R as acknowledged by you on the front page of the aforesaid Question Booklet, but you have written another Booklet No. B 1173197299 R on your OMR answer sheet in the column provided for it, which was never issued to you in Paper II. This has been done by you with a mala fide intention.

Whereas the Question Booklet No. A 711249199 R and B 7113101299 R (as per your acknowledgment on the front page of the question Booklet actually issued to you) were of English version, but the Question Booklet Nos. A 7112194599 R and B 1173197299 R written by you on the answer sheet are Question Booklets of Hindi version which were never issued to you.

Whereas the very Booklet Nos. A 7112194599 R and B 1172197299 which have been mentioned by you on the OMR answer sheets have also been repeated by several other candidates in contradiction to the actual booklet No. issued to them, it is thus proved to be an act of adopting unfair means in the examination in a planned manner.

Whereas after detection of the above abnormal conduct on your part, the matter was thoroughly considered and investigated by an investigation committee and the said committee is fully convinced that you have deliberately adopted such unfair means to get undue advantage in the said examination."

3. By means of this writ petition, it is prayed that the order dated 14/16.8.1999 through which the result of the petitioner of CPMT 1999. Annexure-5 to the writ petition has been cancelled, be quashed and the respondents be commanded to declare the result of the petitioner of the said test and to admit her in M.B.B.S. 1st year course in some Medical College, after necessary counselling.

4. When this petition came up for admission before this Court on 6.9.1999, an interim order was passed directing the respondents to call the petitioner for counselling, which was, however, subject to ultimate outcome of the present petition. The parties were also directed to exchange affidavits. Counter and rejoinder-affidavits have been exchanged. Heard Sri S.P. Singh, learned counsel for the petitioner, Sri. S.N. Verma, learned counsel for the respondent-University of Roorkee assisted by Sri Dinesh Kakkar and Sri Ashutosh Srivastava, learned counsel for the respondent No. 3 Director General, Medical Education and Training U. P., Lucknow.

5. In the counter-affidavit filed on behalf of the respondent No. 1 which has been sworn by Dr. A.M.C. Srivastava, who himself happened to be a member of C.P.M.T.-99 committee, it has been stated that the candidates appearing in the CPMT-99, were given option to write their answers either in Hindi or English language. The question papers were printed in English and Hindi languages and issued to the candidates in accordance with their choice in their allocated centres of examination. The Optical Mark Reader (for short "OMR") answer sheet in duplicate was also separately issued to the candidates on which they were required to mention the actual question Booklet code number issued to them. Four sets each of the question papers in Chemistry and Physics in English and Hindi versions and four sets each in the IInd paper, i.e., Zoology and Botany in English and Hindi version were got printed, chart whereof is Annexure-C.A. 1 to the counter-affidavit. When the answer sheet submitted by the candidates were scanned by the OMR, to check the discrepancies, the following instructions were fed to the computer :

(i) to check whether the question Booklet code numbers marked by the candidates on their answer sheet tallied with the question Booklet code numbers issued to that centre and

(ii) to check whether the question Booklet code number marked by the candidates tallied with valid (actual) question booklet code numbers.

6. According to the respondents, the computer brought out all such cases where the above discrepancies were found. These cases of discrepancies included the cases of 32 candidates, including the petitioner and on examining the matter thoroughly, it was found that the petitioner and other 20 candidates in the first paper and the petitioner as well as 25 other candidates in the second paper had mentioned the question Booklet number which was not actually issued to them. A copy of the report of Unfair Means Committee has also been brought on record in the form of Annexure-C.A. 2. According to the respondents, after the question booklets were handed over to the candidates at the time of examination, one of such booklets (Hindi version) in each session was managed to go outside the examination hall. The question paper, having been brought out of the examination hall, was solved by those who conduct coaching classes and smuggled back the same to the examination centers where petitioner and other such candidates copied the same and mentioned booklet number for which the

answers were made available to them irrespective of the actual booklet numbers issued to them. It has been further stated that the University only appoints Centre Superintendent for particular centre and the remaining staff, such as. Assistant Superintendent, invigilators, etc., is appointed by the Centre Superintendent according to his own choice. Since the centres are usually educational institutions, normally the Principals are appointed as Centre Superintendents. Another counter-affidavit has been filed by the State Government (Medical Department) wherein, more or less, the averments made in the counter-affidavit of the University of Roorkee have been reiterated. The petitioner has also filed rejoinder-affidavits, denying the averments made in the counter-affidavits.

7. It is an admitted fact that there were two types of question booklets--one meant for the examinees, who opted to give their answers in English and the other for those, who opted Hindi. Question booklet Nos. A 7112491999 R and B 7113101299 R were issued to the candidates who opted English and A 7112194599 R and B 1173197299 R were issued to the candidates who opted Hindi, as their medium of language to give answer. It is also admitted fact that the petitioner had opted for English language as medium for giving answer to the question papers whereas she mentioned A 7112194599 R in her answer sheet, which was not allotted to her and which is a number allotted to the candidates who opted for giving answer in Hindi language.

8. In view of aforesaid admitted factual position, the core question for consideration, on which turns the ultimate fate of the petitioner depends, is : whether mere mention of different question booklet number in the answer sheet, instead of mentioning the actual question booklet number allotted to her, will amount to adoption of "unfair means". To arrive at a proper conclusion, it has to be considered as to what is the significance of allotting different question booklet numbers to the candidates giving their answers in Hindi and English as also the impact on marks obtained by a candidate if he/she has described the question booklet number differently than the one actually allotted.

9. A perusal of question booklet codes, contained in Annexure-C.A. 1 to the counter-affidavit of the Roorkee University shows that different codes have been allotted for each of the four sets of question paper booklets in Hindi as well as English languages. In paragraph 19 of the counter-affidavit, Dr. A.M.C. Srivastava, deponent, has averred that the question booklets were packed in bundles of 50 each. All these bundles had either four sets of papers in English language or in Hindi language. All the four sets (say A, B, C, D) were inter-mixed in the sequence A, B, C, D. (A, B, C, D.....so on) and were issued to the candidates just 15 minutes before the actual time of start of examination at random. All the 100 questions in both papers were common in all the booklets, though the order and the setting of the questions in all the four sets in each question paper was quite different. For example, in one set of booklets, the particular questions were from serial numbers 1 to 25. In the different set of

booklets, the same questions may be from serial numbers 26 to 50. 51 to 75 or 75 to 100, or in any other sequence. The sole purpose for doing so obviously was to ensure that no unfair means are adopted. A candidate sitting in one room may have a paper in which the question may be at sl. No. 1 whereas the candidates sitting behind him could have the same question at sl. No. 47. The candidate sitting in the next row may have a booklet number in which that very question is at sl. No. 11. Since the candidate has only to mark the answer by darkening the printed circle by ink, in the computerized column, it ensures that the candidates sitting immediately behind or in front or by his sides. cannot copy from each other. The aforesaid procedure makes it virtually impossible to copy the answers since a candidate cannot possibly have an, idea as to what series of question paper has been handed over to the other candidates.

10. The case of the respondents is that although the top candidates selected for first counselling have got about 77% marks, the petitioner as well as all the candidates who have engaged themselves in the adoption of unfair means would secure 80% or more, if evaluated on the basis of question booklet code fraudulently mentioned in their answer sheets different from the one actually allotted to them.

11. The petitioner had opted for papers in English language. She was given the papers in the same language. The group of candidates who opted English language were made to sit at a place different from that meant for the candidates who opted papers in Hindi language. 11 passes beyond one's comprehension as to in what circumstances the petitioner came to know of the Booklet Code Number to be used by candidates who opted for papers in Hindi language and wrote a different question booklet number, which was never allotted to her. It is possible that a candidate, on account of inadvertence, may write wrong roll number or question booklet number, by misquoting a particular figure but to write a question booklet No. which is allotted to another candidate, who has opted to write his/her answers in Hindi, by the petitioner raises serious doubt and suspicion. During the course of arguments, it was urged on behalf of the respondents that the examination centre, namely. St. Fidelis College, Vikas Nagar, Lucknow, wherefrom the petitioner appeared in the CPMT. was in the grip of use of unfair means. From this centre, as many as 21 candidates in the first group and 26 candidates in the second group, have been found using unfair means. It was maintained that what happened was that huge amount from the candidates, wishing for admission by unfair means in CPMT-99, was taken by some persons, who formed a racket in connivance with the invigilators at the aforesaid Centre and other concerned staff. They smuggled out a question sheet, prepared the answer with the help of some well qualified teachers who run their coaching classes, and managed to send the same in the examination hall. This answer sheet was copied by the petitioner and such other candidates. However, in doing so, they committed a glaring and fatal mistake. Booklet number belonging to candidates, who opted papers in Hindi language, was deliberately mentioned in the English group of papers, instead of quoting the originally

allotted booklet number. Had the petitioner been the only candidate using a different question booklet number, (which was allotted to those who opted to write their answer in Hindi language), her version could have been believed, but there are as many as 25 other candidates who have done the same thing which was deliberate act and not a bona fide mistake--all in pursuance of a design calculated to confer undue advantage and with an avowed object of securing maximum marks to march over the other candidates in the matter of selection.

12. In the alternative, even if the case of the petitioner that she used the wrong Question Booklet Number accidentally on the answer sheet is accepted and her sheet is examined with English Booklet Number command, the result would still be worse for one simple reason that she answered the sequence of questions contained in the Hindi answer sheet.

13. There is considerable force in the submission made on behalf of the learned counsel for the respondents. The overall facts and circumstances of the present case reveal very sordid tale of affairs happening in our educational institutions. The petitioner, no doubt, is a meritorious girl. She is throughout first class candidate. But she was certainly lured to resort to unfair means instead of exhibiting her merit in the test. From the material brought on record, this Court is not persuaded to accept the contention of the petitioner that her result has been wrongly withheld. For the reasons stated above, there is sufficient material available with the respondents to probe the matter and unearth the truth. During the course of arguments, it was pointed out that the matter has already been entrusted to the C.B.I./Vigilance. If it is correct, then it would not be proper for this Court to touch the merits of the case as the same may deflect the course of investigation. For the purpose of this case, suffice it to say that the CPMT-99. committee constituted by the University of Roorkee consists of eminent academicians. They are experts in the field. They have formed an opinion against the petitioner that she has used unfair means in the aforesaid examination. This opinion or conclusion is well founded.

14. This Court is loath to interfere with the decision taken by the experts in the field and the Courts should give due regard to the interpretation of educational authorities. Academic freedom demands responsibility on the part of the academicians to raise high standards of education. If the academic community does not fulfil the responsibility, it invites interference by Courts. The Courts have been cautious enough in upholding academic freedom and the autonomy of the educational Institutions, particularly, imparting professional courses and, therefore, has shown great reluctance to interfere with the decisions of the experts in the field, as would be evident from the series of decisions of the Apex Court. A reference may be had to a recent decision of the Apex Court in Admission Committee, C.I.I. 1995 and Another Vs. Anand Kumar and Another, , wherein, it has been held that in the absence of mala fides or any other material. High Court should have preferred to accept the Selection Committee's version and to require the Selection Committee to Justify each and every selection made

by it, amounts to imposing an impossible burden on it. In *Jawaharlal Nehru University Students' Union Vs. Jawaharlal Nehru University and Another*, , the Apex Court held that Court should not interfere with academic policy which has a rational basis and is not arbitrary. In *Krishna Priya Ganguly and Others Vs. University of Lucknow and Others*, , the Apex Court laid down guideline to the effect that High Court, in its extraordinary jurisdiction under Article 226 of the Constitution of India, cannot devise its own criterion and has no jurisdiction to introduce its notions in academic matter. The High Court was not competent to do so and had no Jurisdiction to import its own ideology. Similarly, in *Dr. M.C. Gupta v. Dr. A.K. Gupta and others* (1979) Lab IC 296 . Hon"ble Supreme Court held that when selection of a candidate is made by a Commission aided and advised by experts having technical experience and high academic qualifications in the specialised field probing teaching/research experience in technical subjects, the Courts should be slow to interfere with the opinion expressed by experts unless there are allegations of mala fides against them. It would normally be prudent and safe for the Courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the Courts generally can be. To the same effect was the view of Apex Court way back in 1966 in *Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman*, , wherein it held that in dealing with matters relating to orders passed by authorities of educational institutions, the High Court should normally be very slow to intervene under Article 226 of the Constitution because the matters falling within the jurisdiction of the educational authorities should normally be left to their decision and the High Court should interfere with them only when it thinks it must do so in the interest of justice. It is thus settled and firm proposition of law that 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 in the field.

15. In the conspectus of the facts narrated above, it is well established that the petitioner has resorted to unfair means. The faint and bald allegation of mala fide on the part of the Selection Committee remains unsupported by any tangible evidence. It is merely an ornamental plea. The case fails both on legal and factual matrix.

16. Before parting, it may be observed that the Director General, Medical Education. Ministry of Health. U. P. Government, Lucknow, respondent No. 3 shall move the State Government to ensure that a full fledged enquiry into the matter is conducted by C.B.I./Vigilance so that the truth may be unearthed and appropriate action can be taken against the recalcitrant Centre Superintendent and other members of the staff as well as the concerned Coaching Institute.

17. The writ petition is accordingly dismissed. The interim order dated 6.9-1999 is discharged. Parties shall bear their own costs.