

(1982) 02 AHC CK 0057

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 13970 and 13971 of 1981

Nilima Bhatnagar etc

APPELLANT

Vs

State of Uttar Pradesh and another

RESPONDENT

Date of Decision : 15-02-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1982) 02 AHC CK 0057

Hon'ble Judges : Satish Chandra, CJ and A.N.Varma, J

Final Decision : Allowed

Judgement

A. N. Verma, J.

These two petitions are being disposed of by a common judgment, as the controversy involved in the two is identical.

Km. Nilima Bhatnagar and Shri Sushil Kumar, the two petitioners were both candidates at the 1981 Combined Premedical Test (C. P. M. T. for short). The said examination was held in July, 1981 and was conducted by the Meerut University, Meerut for the purpose of selecting candidates for admission to the various State Medical Colleges of U. P. Admission to these colleges is made by a committee appointed by the U. P. Government for that purpose and admissions under the applicable rules are required to be made strictly in order of merit and within the limits of vacancies available in those colleges, 50% of the seats are reserved for various categories of candidates, while the remaining 50% are for general categories open to all those possessing the requisite qualifications for eligibility. Km. Nilima Bhatnagar was a candidate in the category reserved for general (Female), candidates, while Sushil Kumar appeared was a candidate in the category reserved for backward classes.

The aforesaid examination consisted of four papers, namely Botany, Chemistry, Physics and Zoology. Each papers comprised 100 questions of objective nature. Against each question the papers indicated several alternative or probable

answers. The candidates were required to choose and indicate which one of those several alternatives was the correct answer. Three marks were to be awarded for every correct answer and for wrong answers, the candidate incurred the liability of negative marking, i.e. for every incorrect answer one mark was to be deducted.

The results were declared by publication in various newspapers on 5th September, 1981. The petitioner's names did not find place among the candidates selected for j admission. Within a few days of the publication of the results, the State Government also published what has been described in the counteraffidavit filed on behalf of the respondent University as "Key answers" for each of four papers. Key answers were supposed to be the correct answers supplied by the examiners and were to form the basis of evaluation of the papers of the candidates. The petitioners compared their own answers with these "Key answers" with the help of the additional chare made available to each candidate for keeping a copy of his answers. The candidates were allowed to take home these additional charts at the end of the examination. The petitioners found upon a comparison that some of the "key answers" themselves were wrong. The petitioners and their guardians and parents consulted authoritative texts in various papers, which disclosed that some of the "key answers" themselves were incorrect. Obviously, therefore, the petitioners found that their papers had been wrongly evaluated. Representations were thereafter filed by or on behalf of the petitioners within the prescribed period to the Registrar of the respondentUniversity inviting the attention of the authorities to the demonstrable errors which had crept in. Under the relevant rules the answerbooks of the candidates are preserved only for three months from the date of the publication of the C. P. M. T. merit list. The petitioners had, therefore, hastened to make representations and to continue to remind the respondentUniversity as well as the State Government from time to time about their representations. The representations were in considerable detail and were supported by extracts from leading authorities on the subjects.

Not having received any redress and their representations having failed to evoke any reply, the petitioners approached this Court for the relief inter alia of quashing the answers and directing respondents, firstly, to treat the answers given by the petitioners in their answerbooks as correct, and, secondly to reevaluate the petitioners' answers on the basis of the correct answers given by them and thereafter to admit them in the M. B. B. S. course for which the petitioners had both applied and appeared at the said examination.

Counter and supplementary counter affidavits have been filed on behalf of the respondentUniversity. The State Government arrayed as respondent No. 1 has, however, not filed any counter affidavit controverting the assertions made in the petitions, The respondentUniversity has in the supplementary counter affidavits, filed in each of the two petitions, conceded that the Key Answers in regard to questions Nos. 3, 28. and 63 were wrong and that the petitioners answers in

regard thereto were correct. In the supplementary counteraffidavit it is asserted that the ViceChancel for of the respondentUniversity asked the paper setters in various papers to disclose their reasons and authorities supporting the "key answers" supplied by them. It appears that the ViceChancellor also forwarded to the paper setters the contentions of the petitioners. The paper setters replied to this query. There replies have been annexed to the supplementary counter affidavit. In these replies while the examiners disputed the contentions of the petitioners in other subjects, they conceded that the answers given by the petitioners in the Chemistry paper in reply to questions Nos. 3, 28 and 68 were correct. In regard to question No. 90, the examiner of the Chemistry paper further conceded that the answer of the petitioner Sushil Kumar was correct. Along with the supplementary counteraffidavit, the respondent University has annexed a chart showing the revised marks, which ought to have been awarded to the two petitioners. According to this chart, the fpstitioners. Km. Nilima Bhatnagar became entitled to be awarded 882 marks, while Sushil Kumar also became entitled to get the same marks after the rectification of the marks

The net result of the facts conceded in the supplementary counteraffidavit is that results of both the petitioners were demonstrably wrongly evaluated. The last candidate selected in the catgery of Km. Neelima Bhatnagar had secured 881 marks while the last candidate selected in the category of backward (male) had been awarded 872 (according to the petitioner) and 875 (according to the respondentUniversity) marks.

Under Instruction No. 27 issued by the Examining Body to the candidate, admission to the seats in the different Medical Colleges was to be made "strictly in order of merit. Instruction No. 27 reads thus:

"Admission to the aforesaid seats in the different medical colleges shall be made by a Committee appointed by the U. P. Government for this purpose, and shall be strictly in order of merit and within the limits of vacancies available."

From the facts conceded by the respondentUniversity the conclusion seems inescapable that the petitioners were wrongly and illegally refused admission on the basis of a mistaken evaluation of their answers in Chemistry arising from the errors in the "key answers" themselves. There has thus been, in our view, a clear breach of instruction No. 27. The petitioners have, on the facts established and admitted, become entitled to be admitted on merit.

In the counteraffidavit filed on behalf of the respondentUniversity, however, it was asserted that if the marks of all the candidates were to be revised in accordance with the facts now conceded by the papersetter in Chemistry, there would be some candidates in the waitinglist between the last candidate selected and the petitioners. We asked the learned counsel for the respondents to let us know whether any of such candidates had filed representations before the Registrar (C. P. M. T.) or the State Government. We adjourned the hearing of the cases for a few days to enable the learned counsel for the respondents to make

the necessary enquiry and inform to the Court of the true position. When the hearing was resumed, the learned counsel for the respondent University informed the Court after looking into the revised lists annexed to the supplementary counter affidavits and the reply of his letter addressed to the Registrar of the respondent University that in this category of candidates (whose marks were entitled to be increased as a result of the error discovered in the marking of the Chemistry paper) only three candidates have filed representations, namely, Km. Rita Gupta, Km, Nilinia Bhatnagar and Shri Sushil Kumar. All these three have filed petitions in this Court. We are informed by counsel for the University that Km. Rita Gupta has filed her petition before the Lucknow Bench of this Court. The position that emerges, therefore, is that none of the other candidates falling in this category has filed either a representation or otherwise challenged his or her result by way of a suit or a writ petition. We, therefore, see no ground for not granting appropriate relief to the petitioners.

Upon applications made by the petitioners for interim, relief a Bench of this Court passed the following order:

"List for orders on 14th December, 1981 on or before that date learned counsel for the respondent shall file a counter affidavit. If any seats are vacant today or fall vacant hereafter out of them two seats shall not be filled in till further orders of the Court.

Sd./K. N.

S. Sd./K. C. A.

3121981."

In this background we see no impediment in our way in issuing a writ of mandamus directing the respondent State Government to admit the two petitioners against the two vacancies which were directed to be left unfilled until further orders of this Court, provided, of course, those two seats were vacant on 3121981 or became available or vacant thereafter.

Learned counsel for the petitioners placed strong reliance on the decision of the Supreme Court reported in 1979 (1) Supreme Court Cases, page 572. In that case their Lordships of the Supreme Court held that on finding illegality in the results of the professional examinations not only should the Courts strike down the impugned action, but also give suitable remedial directions without, however, ignoring the events which have already taken place, namely, the admissions, which have already been made. This decision does lend considerable support to the contention of the petitioners. However, we need not go that far in the present case: in view of the directions issued by this Court on 3121981 providing for reservation of two seats for the two petitioners.

In the circumstances of the case both the petitions are allowed. We direct the respondents admit the petitioners (Km Nilima Bhatnagar and Shri Sushil Kumar) for the study of M. B. B. S. course against the two vacancies reserved for the

petitioners under the order of this Court. If, however, no such vacancies existed on 3121981 or arose thereafter during the pendency of this petition, the petitioners should be admitted against the vacancies which may arise in the future in their respective categories. Both the petitioners are entitled to their respective costs from the respondents.