

(2002) 07 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No's. 1446, 1467, 1472, 1473, 1496 and 1558 of 2002 and W.P. (Lodging) No. 1512 of 2002

Nirav Deepak Jobanputra

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 10-07-2002

Acts Referred:

Citation : (2002) 4 ALLMR 309 : (2002) 5 BomCR 596 : (2002) 4 BOMLR 806 : (2002) 4 MhLj 125

Hon'ble Judges : S. Radhakrishnan, J;D.B. Bhosale, J

Bench : Division Bench

Advocate : V.M. Thorat, M.M. Vashi and M.N. Zambre, for the Appellant; A.A. Kumbhakhoni, Special Counsel, Geetanjali Prabhu, Manjiri Shah and Kalyanram, A.G.Ps., for the Respondent

Judgement

S. Radhakrishnan, J.—Heard Mr. Thorat and Mr. Vashi the learned counsel for the petitioners and the Special Counsel Mr. Kumbhakhoni with Ms. Geetanjali Prabhu, Ms. Manjiri Shah and Ms. A. Kalyanram the learned A. G. Ps. for the respondents.

2. All the above petitions raise the same points of law and the facts are also similar. In view thereof we are disposing of all the above writ petitions by this common judgment and order.

3. Rule in all the above petitions.

4. Rule made returnable forthwith by consent. The learned counsel for the respondents waive service. By consent taken up for final hearing forthwith.

5. In the first group of petitions, Mr. Thorat is representing the petitioners wherein the relief sought is that this court should direct respondent no. 2 Director of Medical Education and Research to provide the petitioners forthwith the question paper of Common Entrance Test held in the academic year 2002-03 with the further directions to correct the marks of the petitioners after ascertaining the correct model answers and key fed into the computer. In the

second group of petitions Mr. Vashi is representing the petitioners wherein the relief sought is that this Court should verify the question paper and answer booklet version with the choice response of the petitioner and direct respondent no. 2 namely the Director of Medical Education and Research to rectify the marks obtained by the petitioner and for the correct placement of the petitioner in the merit list.

6. Pursuant to the directions of the Apex Court and also in view of regulations framed by the Medical Council of India as far as admission to M.B.B.S. Degree Course is concerned, now it is mandatory for all the States in India to hold a Common Entrance Test. For this year it is known as MH-CET-2002. In that behalf the State of Maharashtra had issued a notification on 1st February, 2002 known as Rules for MH-CET-2002. The Director of Medical Education and Research being respondent no. 2 has been appointed as the competent authority by the Government of Maharashtra by its resolution dated 21st December, 2001 to supervise and carry out the process of admissions to various medical courses known as Health Science Courses. The two groups of petitions mentioned hereinabove challenge Rule 8.3.3 of the aforesaid 2002 rules which reads as under :

"The answer sheets of MH-CET 2002 examination will be assessed by scanning with the help of Computer. There is no chance of error in this system. In spite of this, if the candidate is not satisfied and wishes to verify the answer sheet, a written representation in prescribed proforma (Annexure "P") should be submitted to the Divisional Authority (as mentioned in Annexure "A"), within 4 days of declaration of the result of MH-CET 2002, along with Demand Draft/Pay Order of Rs. 800/- (Rs. Eight Hundred only) drawn on Nationalised Bank in favour of Director of Medical Education & Research, Mumbai, payable at Mumbai.

The candidate will be given photocopy of the answer-sheet and model answer key after verification by the Competent Authority.

The representations received by the Divisional Authorities are to be submitted within next 24 hours to the competent Authority for verification and necessary correction, if any. The reply to the said representation will be given within the period of 8 days. Representations received after the specified period will not be entertained. The changes in the merit number of the candidate if any, will be displayed on notice board at the office of the Competent Authority and on the web-site. The decision of the Competent Authority shall be final and binding."

In the above rule the provision is that the candidate will be given a photocopy of the answer sheet and model answer key after verification by the competent authority. The main grievance of the petitioners in above group of the petitions is to maintain transparency in the examination process and respondent no. 2 ought to provide even the question paper which was used during the aforesaid examination so as to enable the petitioners to compare their answers as well as the assessment. In this MH-CET examination held in 2002, all the students who

had applied for their answer sheets and model answer key, were furnished to them, as per the aforesaid Rule 8.3.3. However, they were not furnished with the actual question paper. The main grievance is that respondent No. 2 ought to provide the students with the question paper also so as to make the entire process transparent.

7. Shri Thorat, the learned counsel appearing on behalf of the petitioners in above petitions, submitted that there could be an error in the assessment in as much as the petitioners are not provided with the actual question paper and only the petitioners are allowed to verify the answer sheet with model answer key and hence they will not be able to know in respect of their assessment. In absence of the question paper the possibility of error cannot be ruled out and as such respondent No. 2 ought to be directed to provide the question paper. It may be noted here that in none of the petitions any specific allegation of any error occurring by not giving the question paper has been pleaded and what has been pleaded is that there is a likelihood of an error and also that the petitioners are meritorious students and they were expecting higher marks and that they had not obtained the marks as per their expectations in MH-CET examinations. Mr. Thorat also referred to the Division Bench judgment delivered by this court during the last year with regard to MH-CET 2001 examination namely *Jimmy Abraham Thomas and Ors. v. The State of Maharashtra and Ors.* reported in 2002 (I) All Maharashtra Law Reporter page 7, wherein the division bench of this court has passed various directions and one of them is Clause (F) which reads as under:

"(F) Direction for the future examination :

(1) With a view to bring in transparency and to avoid such a situation in future, the Director of Medical Education is directed to consider publishing questions and correct answers in words and their appropriate key position (a, b, c or d) within one week of the examination for all the versions;

(2) The Director of Medical Education will examine and evolve a better and more satisfactory method of verification of answer books;

(3) As we have seen from a number of judgments noted earlier, such situations of requiring additional seats at the last moment have emerged often and there is need to have a mechanism to deal with such situations. We direct the Medical Council of India to evolve such appropriate scheme within six months hereof so that any such eventuality hereafter can be taken care of."

8. Mr. Thorat emphasised that this court had directed the Director of Medical Education to consider publishing questions and correct answers in words and their appropriate key position as (a, b, c and d) within one week of the examination for all the versions. Mr. Thorat contended that the Director of Medical Education has only disclosed the model answer key and photocopy answer sheet to the petitioners concerned but the actual questions which were asked in that question paper have not been disclosed, therefore, the contention

is that the above directions passed by the division bench of the High Court have not been complied with, while framing Rule 8.3.3. which has resulted in injustice to the petitioners as they could not verify the assessment properly.

9. Mr. Thorat also contended that in other states such as State of Andhra Pradesh, State of Karnataka, the authorities have evolved a better system of Common Entrance Test wherein even the question papers are supplied to the students after the said Common Entrance Test and even the State of Maharashtra should follow the same procedure.

10. Mr. Vashi, the learned counsel appearing for the petitioners in the other group of petitions also strongly supported the contentions of Mr. Thorat and contended that disclosure of the question paper will not in any way prejudice respondent No. 2. Further it will be in the interest of the students and to rectify any error that might crop up. He also emphasized that this entrance examination is very vital for the students in their career and this disclosure will be very important so as to prevent any mistakes occurring in the assessment. He also strongly relied on the directions given by this court in the judgment of Jimmy Abraham Thomas (*supra*). Mr. Vashi contended that while feeding the answers into the computer which ultimately will be evaluating the performance of the students in their examinations an error cannot be prevented if an erroneous feeding were to place in the computer and the students are likely to suffer, therefore, it is necessary to disclose the question paper to avoid any such error or injustice. In the above entrance test, respondent No. 2 has adopted a system wherein there were four versions of question papers and all the four versions contain same questions but the sequence of the questions may vary i.e. to say a particular question paper may have 1 to 20 questions and in the second version the same question Nos. 1 to 20 may be shown as 80 to 100, in that manner the slots of questions were re-arranged but in the ultimate analysis all the questions of four versions contain identical questions but the sequence is not similar. This is adopted in view of the fact that the answers are given only by marking (a, b, c or d). If the students sitting nearby were to be given the similar version then it would be very easy to copy for a student of mediocre ability and he can easily secure higher marks hence to avoid this, the respondents have adopted this method of having four versions. Mr. Vashi contended that an error could occur while arranging the sequence or while actually preparing the answer key and this might cause injustice to the students and, therefore, disclosure of the question paper is very essential.

11. Mr. Kumbhakhoni, the Special Counsel appearing on behalf of the respondents contended initially that this issue was agitated at length before the Division Bench of Aurangabad Bench of Bombay High Court wherein a group of petitions were filed pressing the same issue and the Aurangabad Bench of Bombay High Court in Writ Petition No. 1798 of 2002 along with the connected matters by the judgment and order dated 20th June, 2002 had declined to interfere and found no ground justifying disclosure of the question papers. He

strongly relied on the aforesaid division bench judgment of the Aurangabad Bench of Bombay High Court, In addition thereto Mr. Kumbhakhoni brought to our notice the observations of the Apex Court on a similar issue cropping up in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, . In the judgment the Apex Court had considered the scope of judicial review with regard to such matters by the High Court. In that context the Apex Court has observed as under:

"In our opinion, the High Court was perfectly right in taking this view and in holding that the "process of evaluation of answer papers or of subsequent verification of marks" under Clause (3) of Regn. 104 does not attract the principles of natural justice since no decision making process which brings about adverse evil consequences to the examinees is involved. The principles of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performance or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners. "

12. In the same judgment the Apex Court has also referred and relied upon the observations of the Apex Court in a case of Union of India (UOI) Vs. Mohan Lal Capoor and Others, which reads as under :

"It is not expedient to extend the horizon of natural justice involved in the audi alteram partem rule to the twilight zone of mere expectations, however, great they might be."

Similarly the Apex Court in the aforesaid Judgment of Paritosh (supra) has also held that

"It would be wholly wrong for the court to substitute its own opinion for that of the legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the Statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the

Act. It is not for the Courts to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation making power conferred on the delegate by the Statute."

"The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with or in violation of any of the limitations imposed by the Constitution."

"We are unable to understand this provision as conferring any right on an examinee to demand a disclosure inspection or verification of his answer books or other related documents."

"Further, it is in the public interest that the results of Public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and revaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process."

"Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defensive of the same. As has been repeatedly pointed out by this Court, 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 of actual day-to-day working of educational institutions and the departments controlling them."

13. Having considered all the submissions of the learned counsel for the petitioners as well as the respondents the basic issue involved in these writ petitions is with regard to disclosure of question paper to the petitioners in a competitive examination. In this context it is relevant to note that the respondents in their affidavit in reply have stated the reasons for non-disclosure of question paper which is as under :

"9. I say that the Director and the respondents have considered the competitive

nature of the examination and all other relevant factors to conclude not to provide the aforesaid question paper to the petitioner. I say that the Director has also considered the fact that this was only the fourth occasion for holding such a kind of examination in the State of Maharashtra. Consequently enough question bank is not available with the Directorate to avoid repetition of the same questions in the following years. The Director has also considered the fact that the syllabus/portion prescribed for the examination is very limited and, therefore, giving copies of the question paper will result into exhausting of crucial questions which really draw a line between those who are successful in securing admission to medical course and those who fail to do so. I say that the Director has also taken into consideration the fact that in the various other similar competitive examinations held by various other statutory authorities such as Maharashtra Public Service Commission, Union Public Service Commission, National Defence Academy, Staff Selection Commission, P.M.T. U.S.M.L.E. etc. neither the copies of the Question Papers are permitted to be carried away by the examinees (even after examination is over) nor the question from the questions papers are published. I say that in some of such examinations though the question papers are allowed to be carried away, neither the inspection of model answers nor of the answer sheet of the examinees are permitted. I say that on the same principles the Director was also of the opinion that the questions from the question papers of the examinations in question should not be published. I say that thus taking an overall view of the matter at this point of time at least, the Director has formed an opinion that it is not in the interest of the student community as such to publish questions as suggested by this Honourable Court on the earlier occasion."

14. From the above it is clear that specially in the competitive examination when the authorities were to disclose the question paper, the entire confidentiality and secrecy of the competitive examination will vanish. It is also pointed out that even Maharashtra Public Service Commission, Union Public Service Commission, National Defence Academy, Staff Selection Commission and various public bodies do not disclose the questions. In fact it was pointed out by Mr. Kumbhakhoni that as disclosed in the affidavit in reply dated 18th June, 2002 in Writ Petition No. 1473 of 2000 that utmost care has been taken in finalizing model answer key. In fact the model answers key is prepared by the Paper Setters and Examiner and again double checked by the competent person. After finalizing model answer key the same were fed into the computer. In paragraphs 10, 11, 12, 13 and 15 of the affidavit in reply the detailed procedure has been explained as to how no error could occur in this model answer key prepared for the questions in all the four versions. Even to prevent any alterations subsequently, the Images of the answer books have been scanned and recorded. Under these circumstances the learned counsel for the respondents submitted that there is absolutely no chance of any mistake occurring, under any event in the competitive examination of this nature and certain amount of confidentiality will have to be maintained and the question paper could not be disclosed, for the reasons stated above. The above

decision not to disclose the question paper was also for the following reasons as disclosed by Director of Medical Education and Research as under:

"We have begun the Common Entrance Test in Maharashtra just four years ago. Every year the students are given 200 multiple-choice questions. However these questions are of complex nature, Question Bank cannot be formulated at this juncture. Therefore, if the question paper is put on Website it may be little problematic. Since questions are limited, there is likelihood of repetition of questions in the ensuing years. Therefore giving of question paper to the students may not be advisable. In addition, the confidentiality and fairness may get adversely affected. Besides, in no competitive examinations like M.P.S.C., P.M.T., U.S.M.L.E. OR I.IT, examinations, question paper is given to the candidates, probably due to the above mentioned grounds.

Considering of these points, it is felt that question paper may not be given on Website."

15. In fact in this context it would be relevant to note that the Apex Court in very categorical and clear terms has stated in the case of Paritosh (supra) that the students cannot form a part of a system to verify whether the answer books are evaluated properly or not by the Examiner. There is no such legal right for the students to demand, whether the examiner has assessed his answer book properly or not.

16. As far as the contention of the learned counsel for the petitioners that respondent No. 2 the Director of Medical Education was directed to disclose even the question paper as per directions given in the aforesaid Jimmy Abraham Thomas (supra), if one were to see the directions, the Director of Medical Education of Research was directed "to consider publishing questions and correct answers". Accordingly the Director of Medial Education of Research -respondent No. 2 has considered all aspects and taking into account the pros and cons and finally the expert body has decided to disclose only model answer key and actual answer sheet of the petitioners and not the question paper. In the above, we do not find anything irrational and arbitrary on part of the respondents declining to provide the question paper. As has been held by the Apex Court, the students do not have right to demand the question paper and they do not have right to be part of the evaluation system of their performance or to verify the correctness of the evaluation made by the examiners and certain amount of secrecy and confidentiality will have to be maintained, over and above particularly in the examination of this nature almost 83,000 students have appeared and if there is no finality in such examination it may lead to gross and indefinite uncertainty and it would be a chaotic state of affairs and even on this issue the judgment of the Apex Court has held that the results of Public examinations when published should have a finality and it cannot go on endlessly etc. We are also in full agreement with the reasons incorporated in Ex. "I" in the affidavit in reply dated 26th June, 2002 in Writ Petition No. 1446 of 2002 for non disclosure of the question paper.

17. Under the aforesaid facts and circumstances of the case especially in view of the judgment of Aurangabad Bench of Bombay High Court and also in view of the aforesaid observations and categorical judgment of Supreme Court in a case of Paritosh (supra) and for the reasons set out hereinabove we do not find anything illegal, arbitrary or unreasonable on the part of the respondents in not disclosing the question paper to the petitioners.

18. These petitions are devoid of merits. Hence the Rule stands discharged. However, there will be no orders as to costs.

19. Parties to act on an ordinary copy of this order duly authenticated by the Associate/Personal Secretary of this Court.