

(1999) 08 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : C.W.P. No's. 246 and 247 of 1999

Nishant Singh Sipehia and Another	Vs	APPELLANT
Regional Engineering College, Hamirpur		RESPONDENT

Date of Decision : 16-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : AIR 2000 HP 99 : (2000) 2 ShimLC 83

Hon'ble Judges : D. Raju, C.J.; Lokeshwar Singh Pant, J

Bench : Division Bench

Advocate : Praneet Gupta, for the Appellant; K.D. Sood, for the Respondent

Final Decision : Dismissed

Judgement

D. Raju, C.J.—These two writ petitions may be dealt with together since they raise common and identical issues for adjudication and the submissions have been made by the learned counsel appearing on either side also in common.

CWP No. 246 of 1999

2. This writ petition has been filed seeking for issue of a writ in the nature of a direction to the respondents to produce the answer sheets of the subjects of Physics and Mathematics of CPET conducted by the respondent in June, 1999 and directing them to recheck the answer sheets of physics and Mathematics for any mistakes "in totalling and non-marking", and for a further direction also to show/disclose the key-answers on the basis of which answer sheets were evaluated in terms of the decision reported in Shri Asheesh Sharma and Another Vs. Himachal Pradesh University, Shimla and Others,

CWP No. 247 of 1999

3. So far as this writ petition is concerned though the petitioner seeks for similar and identical relief as in the other writ petition, the said relief is confined to the

answer sheet relating to the subject of mathematics.

4. The grievance of the petitioners is that there is no transparency regarding the conduct of the respondent qua the examination on which the entire future career of the students or candidates was said to depend and in this respect the only allegations made to substantiate their grievances are contained in paras 17 to 19 of the respective affidavits which read as follows :--

"17. That there is no transparency regarding the conduct of the respondent qua the examination on which the entire future career of the candidates depends.

18. That the action not disclosing the key answers was illegal, arbitrary and ultra vires. Moreover, there was no provision for getting the answer books re-checked as may be left not marked or there may be discrepancy in totalling.

19. That the absence of the provision for disclosure of key answers is unreasonable as it leaves the examinees in a state of utter helplessness and deprives of an opportunity of even knowing whether the key answers with reference to which their answers are checked by the Evaluator, are patently erroneous or not seems to be justified."

5. Notice has been ordered to the respondents and the respondents have filed their replies.

6. It is contended for the respondents that the Information Brochure pertaining to CPET 1999 did not contain any provision for re-evaluation or re-checking of the answer sheets in relation to the examination in question and stipulation to that extent has also been Incorporated which was though well within the knowledge of the petitioner, he has undertaken the examination without challenging the same and he having took a chance cannot wriggle out from the said position and contend to the contrary after the results have been declared and candidates out of the merit list were called for counselling, finding that the results are not to his taste. The petitioners are said to be estopped from taking such a stand by coming to this Court with these writ petitions. It is also contended that the candidates were not only called for counselling on 26th or 27th July. 1999 but on the basis of the merit list and the counselling, the seats have been allotted to the candidates in various branches and Institutions which have been accepted by the candidates and the admissions were granted and seats filled up and if the same is to be disturbed it could neither be done in the absence of such selected candidates who are spread over the entire Country in various Institutions but not also just and equitable. Adverting to the meritorious performance in 10 + 2 examination claimed for the petitioners, it is contended for the respondents that by itself is not guarantee that the petitioner could have fared well in the CPET also. It is however, contended for the respondents that the answer books of the petitioners were properly checked/rechecked and totalled by independent evaluators correctly and they have been given correct marking and there is no mistake as alleged by the petitioners and that mere fears and apprehensions of the petitioners are based only on imagination. It is

also stated that the answer books of all the candidates who appeared in the CPET have been properly evaluated twice as per the Key answers supplied by the paper setters and the marks awarded to them are strictly as per the performance of the candidates and there is no scope for challenging the same. 6A. The petitioner in CWP No. 246 of 1999 was said to have secured 152 marks out of 300 whereas the petitioner in CWP No. 247 of 1999 was said to have secured only 137 marks out of 300 and the tall expectations, about they securing about 85% of marks with no sufficient basis for such expectation, cannot be the only basis for granting the relief of the nature claimed by the petitioners. As for the fears expressed about the credibility of the key-answers in general, it is contended for the respondents that the respondents have acted in good faith and in a bona fide manner in getting the papers evaluated in accordance with the key-answers supplied by the paper-setters and that the paper-setters are persons of great eminence and experience in the respective subjects. In defending the nondisclosure of the key-answers, it is stated that there is nothing wrong on the part of the respondent in not disclosing of the key-answers and it is stated that the answer sheets have been uniformly evaluated according to the key-answers furnished by the expert paper-setters, in their respective subjects. In dealing with the analogy sought to be drawn in respect of Pre-Medical Test Examination conducted by the University of Himachal Pradesh and the earlier decision of this Court reported in *Shri Asheesh Sharma and Another Vs. Himachal Pradesh University, Shimla and Others*, it is stated that the same cannot be applied to the case on hand and particularly after the stage to which the present selection has reached and the resultant admission formalities having been completed. Reliance is also placed on the unreported decision of this Court dated 20-7-1998 in CWP No. 470 of 1998 which was dismissed for a relief claimed in respect of re-evaluation and re-checking of the answer sheets for the previous Academic Session.

7. Mr. Praneet Gupta, learned counsel appearing for the petitioners placed strong reliance upon the decisions reported in *Shri Asheesh Sharma and Another Vs. Himachal Pradesh University, Shimla and Others*,

8. Per contra Mr. K. D. Sood, learned counsel while reiterating the stand taken in the replies filed; invited our attention to the un-reported decision noticed above and also contended that the decisions relied upon by the petitioners were in the peculiar context of those cases where positive material were forthcoming and placed before the Court to demonstrate the mistakes in the key-answers and in the absence of any such demonstration in this case, the relief sought for could not be and ought not to be allowed merely on apprehensions of the petitioners or to allay fears expressed without any basis. Strong opposition was made for the grant of relief for the reason that it will have an adverse effect of unsettling the results already settled with respect to the candidates admitted all over the Country in several Institutions who are not before this Court.

9. We have carefully considered the submissions of the learned counsel

appearing on either side. The decision in Kanpur University and Others Vs. Samir Gupta and Others, which weighed very much with the earlier Division Benches" in according relief did not by itself give any relief that the key-answers should be furnished also to the candidates or published. This is obvious from the observations contained in paragraph 4 where it is found stated that the students got to know the key-answers out of "generosity of the University" which published the key-answers along with the result of the test. Be that as it may the Division Bench of this which decided the case reported in Shri Asheesh Sharma and Another Vs. Himachal Pradesh University, Shimla and Others, merely impressed upon the need to disclose the correct key-answer sheets while publishing the results and Issued appropriate directions in this regard, apparently as could be seen from the judgment itself, having regard to certain positive information forthcoming and placed before the Division Bench. At the same time, the decision arrived at relating to the claim of the candidates for re-evaluation or re-checking came to be rejected in the following terms :--

"13. On principle too, we are not inclined to hold that the candidates can claim re-evaluation of their answer-sheets in an examination of this kind. A very large number of candidates take these competitive tests. The question papers are of objective type. There are a very large number of questions in each subject. The statement made on behalf of the University in its return is that "the marking of the answer-sheets is done by the evaluators according to the key-answers after having received the moderated key-answers..... and the marking of the answer-sheet done by the evaluators is further checked/re-checked in order to answer that there is no totalling mistake and no answer has been left un-marked....."

14. The provision in Ordinance 6.70 (f) and the Note in the Prospectus that there will be no re-evaluation in the case of P.M.T. examination is, to our mind, fully Justified as the nature of the examination is such that a re-evaluation of the answer-sheets at the request of the candidates would involve the University in stupendous effort and would lead to considerable delay in the finalisation of the list of the candidates entitled to be admitted to the Graduate (M.B.B.S.) Course. The delay should be avoided because the delay in the finalisation of the list would, of necessity, delay the commencement of the studies in a professional course. Moreso, when we know of no accepted principle of natural Justice which may necessitate the granting of a right to ask for re-evaluation to the examinees, who are dissatisfied with the result of the examination. To borrow the words of the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, where it said (in paragraph 12) that (at page SC 1549; AIR 1984) :--

".....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 verify the correctness of the evaluation made by the examiners....."

10. So far as the decision reported in (1991) 1 ShimLC 87 (supra) is concerned,

the same also related to the medical course and the learned Judges of the subsequent Division Bench applied the decision reported in *Shri Asheesh Sharma and Another Vs. Himachal Pradesh University, Shimla and Others*, The subsequent Division Bench which dealt with the case reported in (1991) 1 ShimLC 87 after adverting to the decision of the Supreme Court as well as that of the earlier Division Bench has observed in paragraph 10 that, "it is thus clear that the Supreme Court had approved the direction for re-evaluation with reference to the questions for which the paper setters had given the wrong key-answers.", and ultimately also in paragraph 12 directed that "there will be no more re-checking of the answer-sheets at the instance of any of the candidates for the year 1991." Even in this decision, it could be found noticed in paragraph 8 that there was sufficient demonstration before the Court by producing material by way of compilation contained in Annexure P-4 to show that some of the key-answers provided for by the paper setters are wrong and it was only in such circumstances the limited directions were given by the second Division Bench also.

11. We have carefully considered the submissions of the learned counsel on either side in the light of the decisions noticed above and the materials or allegations and grievances made before us in this case. To say the least these writ petitions have a desired attempt only to fish for any material to find some lapse or other to improve their own prospects by seeking for re-evaluation and re-checking of the answer-papers. In our view, the basis sought to be built in paragraphs 17 to 19 in these writ petitions could hardly be said to be just and sufficient to grant any relief of the nature sought for by the petitioners by extending the principles laid down in the decisions noticed above. The principle underlying the earlier decision is that if some error even unintentionally has crept into the very standards and norms by which the merit of the candidates were purported to be tested and assessed, the Court should not in spite of some concrete material coming to its notice feel helpless and could interfere in the matter to render effective and substantial justice. The earlier decisions in our view cannot be construed as lending any support to a candidate to seek for relief under the guise of some possible mistake in the evaluation or according of marks by demanding for re-checking or re-evaluation. As noticed earlier, the action of the authorities even in the earlier cases in not only stipulating but declining to grant relief for re-checking and re-evaluation in individual cases has been approved by the earlier Division Benches. Therefore. It is not in an individual case of alleged or possible mistake committed in evaluation was permitted to be rectified in any of these judgments by ordering for re-evaluation or re-check. As a matter of fact, so far as the present case is concerned in the Information Brochure particularly in paragraph 5 and under the caption "Rules for conduct of CPET", it is stated as follows in Clause 19 which reads, There shall be no re-evaluation or re-checking of answer-book. Requests for seeing the answer-books re-checked or re-evaluated by the candidate will not be entertained."

12. The petitioners who have undertaken the examination subject to the

stipulation knowing fully well, cannot turn around and crave to assert a right for re-evaluation or re-checking which in our view is not the type of relief or grievance which has been countenanced even in the earlier decisions of this Court also, Since on facts we find that the grievance sought to be espoused or asserted is not with respect to general standards or credibility of those standards or the correctness of the material on which the petitioners were sought to be tested but on an apprehension about the possible omission or lapse in assessing the merit of the petitioner, we do not find it either justifiable or appropriate to countenance the claim of the petitioners and that too at this stage of the proceedings. As rightly contended for the respondent, if allowed at this stage it will affect the settled results already declared in respect of the candidates who are not before this Court and who are spread over the whole of the Country in respect of various Engineering Colleges under the supervision and control of the Regional Engineering College.

13. Coming to the request of the petitioners about the disclosure of the key-answers, whatever may be the laudable purpose behind it or justification otherwise for the same, there is no justification for this Court to comply with such request in this case at any rate, for this Academic Session. Our attention has been brought to the course adopted by the Himachal Pradesh University while conducting the combined test 1999 for admission to the Graduate (M.B.B.S./B.D.S.) Courses in Himachal Pradesh, incorporating a clause under the heading of Details of Competitive Test/Examination in the following terms :--

"5.4 The merit list Indicating marks in respect of all the candidates appearing in the Combined Entrance Test will be declared and displayed on the Notice Board by the University. The question papers in each subject and their key-answer shall be displayed on the University Notice Board Immediately after the declaration of the result for at least two days."

14. We feel that there can be no reasonable justification not to adopt or any Impediment for the respondent in these cases also to adopt at least in respect of the examination to be conducted by them in future a similar course as adopted by the H.P. University. Adopting of such a course would not only help to avert mistakes even committed bona fide or unwittingly or by an oversight but it would make the system also work not only in a transparent but effective and just manner without different norms being applied having regard to the fact that though the authority conducting these examinations are different, they ultimately pertain to the class or category of professional courses. Consequently, while commending and also directing the respondents-College to ad here to a similar system in respect of the examinations to be held from the next Academic Session, we are unable to give any relief in this regard also to the petitioners in these cases, at this stage having regard to the fact that the grievances of the petitioners are not about any infirmity or mistake in the system as, such.

15. The writ petitions are dismissed in the aforesaid terms.

16. In view of the dismissal of the main writ petitions the applications are also dismissed.