

(2015) 06 AP CK 0027

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16336 of 2015

Paneem Manasa

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 24-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 06 AP CK 0027

Hon'ble Judges : A. Ramalingeswara Rao, J

Bench : Single Bench

Advocate : Naga Praveen Vankayalapati, for the Appellant

Final Decision : Dismissed

Judgement

A. Ramalingeswara Rao, J.—Heard the learned counsel for the petitioner and the learned standing counsel for the second respondent.

2. The petitioner is a student who appeared for the A.P. EAMCET examination notified on 03.03.2015. The common entrance test was conducted on 08.05.2015 and she appeared for the agriculture and medical stream. She was assigned the rank of 4995. She secured the following marks in the Eamcet examination:

Sl. No.

Subject

Total marks

Secured marks

1.

Biology

80

75

2.

Physics

40

17

3.

Chemistry

40

20

Total ..

160

112

After adding the weightage marks of intermediate examination, she was given the above rank in EAMCET examination.

3. The present grievance relates to an answer in respect of question No. 30 in B-series of Botany subject. The question paper of Botany contained 160 questions carrying one mark each. A preliminary key was issued on 10.05.2015 followed by a final key indicating the answers. The second respondent invited objections from the students with regard to mistakes in the question papers. The petitioner raised an objection to question No. 30 in B-series and the same was forwarded to the second respondent by e-mail. When the same was not considered, she filed the present writ petition.

4. The petitioner filed the present writ petition on 08.06.2015 by which time the counseling process was also commenced. In view of the nature of the relief sought for by the petitioner, the learned standing counsel was directed to get instructions at the earliest and on the basis of the instructions, the writ petition was heard and orders were reserved on 19.06.2015.

5. The question No. 30 reads as follows:

"Question No. 30. Read the following and identify correct combinations:

SL.NO.

GENUS

FAMILY

CHARACTER

1.

Datura

Solanaceae

Epipetations stamens

2.

Allium

Solanaceae

Tricarpellary gynoecium

3.

Petunia

Solanaceae

Didynamous stamens

4.

Crotalaria

Fabaceae

Diadelphous

6. In the provisional key as well as in the final key, the answer indicated was one number and the grievance of the petitioner is that one number is not the correct answer. The correct answer as per the standard text books prescribed by the Board of Intermediate Education is DATURA-SOLANACEAE EPIPETALOUS. A reading of the objective type question indicated above and the answer suggested by the petitioner shows that the correct answer should have been EPIPETALOUS STAMENS. The question relates to the identification of correct combination of the genus, family and character. With regard to genus and family, there is no dispute, whereas in respect of character, there is a dispute as indicated above. Out of four types, three belong to the same family, whereas the family of Serial No. 4 is different. So far as the genus and character are concerned, they are different. When one compares the correct answer mentioned in the question paper and character suggested by the student, there is some similarity to Sl. No. 1 though it is not exact. However, if a student understands the genus and family; there cannot be any doubt with regard to the identification of the character as indicated above. Even if it is assumed that the suggested character in question is wrong and the suggested answer by the petitioner is correct, the petitioner could have exercised her option to Serial No. 1 only, as it has close relationship and the question relates to identification of correct combinations. The genus and family of other options do not in any manner relate to the character indicated in Serial No. 1. In view thereof, on the facts of the case, this writ petition is liable to be dismissed.

7. However, the learned counsel for the petitioner produced before this Court the total characters of solanaceae family, which is called as potato family and it consists of 2200 species belonging to 85 genera. The Botany text book of Intermediate shows vegetative characters, floral characters and its economic importance. Some important plants of solanaceae family are *Atropa belladonna* (Belladonna), *Capsicum frutescens* (Chilli), *Cestrum nocturnum* (Night queen), *Datura metel* (Thorn apple), *Lycopersicon esculentum* (Tomato), *Nicotiana glauca* (Tobacco), *Petunia alba* (Petunia), *Solanum melongena* (Brinjal), *Solanum tuberosum* (Potato), *Withania somnifera* (Aswagandha) etc. The Floral characters are as follows:

"Floral Characters

Inflorescence: Cymose, axillary as in *Solanum*, terminal solitary as in *Datura*, Panicle in *Tobacco*.

Flower: Bracteate or ebracteate, ebracteolate, pedicellate, actinomorphic, complete, bisexual, pentamerous, hypogynous. Calyx: Sepals five, gamosepalous, persistent in *Solanum* and *Capsicum*, valvate aestivation.

Corolla: Petals five, gamopetalous, valvate or twisted aestivation as in *Datura*.

Androecium: Stamens five, epipetalous, alternating with the petals, anthers dithecal, basifixed, introrse. Gynoecium: Bicarpellary, syncarpous, bilocular but rarely unilocular e.g., chillies, superior ovary, placenta swollen with many ovules on axile placentation, style terminal, stigma capitate. Carpels are arranged obliquely at 45 Celsius degrees. Pollination: Flowers usually protandrous but protogynous in some species of *Solanum*, commonly entomophilous cross pollination. Fruits: Berry (*Capsicum*, *Solanum*, *Lycopersicon*) or capsule (*Datura*, *Nicotiana*). Seeds: Many, endospermic."

In respect of Androecium, it is mentioned as Stamens five, epipetalous, alternating with the petals, anthers dithecal, basifixed, introrse.

8. Now, the issue relates to character of androecium which says as above. What is given in the objective type of question is Epipetalous Stamens. To a knowledgeable student, there is no question of confusion as the floral characters mentioned in the text book tallies with the correct answer mentioned in the objective type question. It is not what is stated by the petitioner-student as DATURA-SOLANACEAE-EPIPETALOUS.

9. The learned counsel for the petitioner relied on a decision of the Supreme Court in *Pankaj Sharma v. State of Jammu and Kashmir and others* and placed reliance on the observations of the learned single Judge of the High Court quoted in the said decision. The above case arose out of an order of the learned single Judge of the High Court of Jammu and Kashmir, which was confirmed by a Division Bench. The facts which are relevant for the purpose of the present case are that the Jammu and Kashmir Public Service Commission conducted an examination for filling up of the posts of eighteen gazetted services. The writ

petitioners appeared for the preliminary examinations and were found not suitable for the main examination as well as the oral interview. The selection process at the preliminary examination was challenged, inter alia, on the ground that it was defective inasmuch as there were spelling mistakes, printing errors, discrepancies, questions having doubtful answers and even wrong answers, etc.; the course adopted by the Commission by deleting certain questions and adding those marks pro rata to the remaining questions was not proper; the decision was also illegal and invalid as it was not taken by majority of members of the Commission etc. The preliminary examination was conducted for considering eligibility of the candidates for the main examination for the purpose of short listing of candidates in the ratio of 1:13. The learned single judge of High Court of Jammu and Kashmir allowed the writ petitions and directed the Public Service Commission to delete certain questions of each paper of "A" series and their corresponding questions in "B", "C" and "D" series and distribute their marks pro-rata to remaining questions of the papers. The following extracted portions in the Supreme Court judgment arose in that context. Even though, the learned single Judge allowed the writ petitions, the matter was carried to the Supreme Court and the arguments in so far as with regard to the questions was concerned, it was contended that it was obligatory to the Commission to ensure that the questions must be such having only one correct answer, but certain questions were totally incorrect containing glaring mistakes, vague and ambiguous, more than one correct answer, they misled the candidates at the examination and the High Court erred in upholding the examination even though it was satisfied that the errors were substantial which called for issuance of several directions. The counsel appearing for the petitioners raised other contentions, however, we are not concerned with them. The contentions raised by the learned counsel for the petitioners were answered by the learned standing counsel of the Commission by submitting that as soon as the attention of the supervisors was invited to certain wrong, incorrect or doubtful questions, the Commission was informed by the supervisors, necessary instructions were given on behalf of the Commission to get the questions corrected or ignored and those instructions were duly communicated to the candidates. It was further submitted that when wrong, incorrect or doubtful questions were ordered to be deleted or ignored and marks of those questions were added pro rata to the remaining correct, valid and legal questions, no complaint can be made against such step. The learned counsel further submitted that no injustice was caused to selected candidates. The Supreme Court considered the rival contentions and held that no case was made out by the appellants to interfere with the order passed by the learned single Judge and confirmed by the Division Bench. It noted that the stand of the Commission is, that wrong questions, questions having more than one answer or questions which were not sufficiently intelligible were totally excluded, deleting the marks allotted to those questions by pro-rata adding them to the remaining questions. The Supreme Court observed as follows: 49. As to the second question, the learned single Judge has held that there were mistakes in questions in compulsory subjects as well as in optional subjects. Learned Single

Judge also held that it could not be believed that necessary instructions were issued by the Commission to Supervisors in time and they were announced and corrections were carried out in the examination centres. In our opinion, the learned Single Judge could not be said to be wrong in recording such finding. From the record it appears that complaints were made as to mistakes, errors, vague answers, wrong answers, etc. by the candidates to supervisors. Supervisors in turn informed the Control Room specially set up by the Commission to receive such complaints. According to the affidavit of the Commission, the Commission considered the complaints, opened original manuscripts, tallied the questions with the printed questions, informed the supervisors about necessary corrections and thereafter those corrections were made. Learned Single Judge has observed that there was no evidence to show that the time was extended by the Commission. According to him, therefore, it was not possible that at all the centres such corrections were conveyed and they were brought to the notice of the candidates within the examination period. The learned single Judge in this connection observed as under;

"In this behalf, I have perused the record of Commission. From the record nothing is available to point out as to which were those questions, the spellings of which were sought to be clarified by the supervisory staff of any Examination Centre, and which were the questions actually verified by the Commission and conveyed to the respective Supervisors for making the announcements. In the absence of such record, it cannot be accepted that the printing errors/spelling mistakes in the question papers were duly rectified by actual announcements in the Examination Centres. Therefore, all the questions, which have wrong spellings of the words used therein have to be treated as wrong questions. In all, there are 12 such questions in Sociology paper, i.e., Q. Nos. 17, 37, 46, 53, 60, 72, 73, 83, 93, 97, 98 and 113 with printing errors/spelling mistakes. Out of these questions, the Commission itself has deleted Q. No. 113. In Q. No. 113 there was printing error in the word "Kwekiuti".

The stand of Commission that the questions having only major printing errors or those which had not been corrected by announcements were deleted is equally unacceptable. There is no record available to show the questions which were actually corrected by announcements. Therefore, neither it can be said nor it has been shown by the Commission which were those questions having printing errors and deserved correction, but had not been corrected through announcements in the Examination Centres. Moreover, there is no policy decision shown to have been taken by the Commission for defining which printing errors would be considered as major printing errors and which printing errors would be deemed to be minor printing errors. In the absence of such policy decision, the Commission could not have validly made any distinction between the questions with major printing errors and the questions with minor printing errors for the purposes of making deletion of questions from the question papers. If the Commission in its wisdom deleted Q. No. 113 from the question paper because of printing error, then on the same principle the Commission ought to have deleted

all the questions which were having printing errors in the paper of Sociology. The action of Commission regarding deletion of only one question out of the questions having printing errors/spellings mistakes suffers from the vice of arbitrariness and unreasonableness. Therefore, all the said 11 questions also deserved from the question paper of Sociology.

Further, let us assume that announcements were made in the examination centres for correcting the spellings of wrong questions. For instance, take the paper of Sociology, in which admittedly there were 12 questions with spelling mistakes/printing errors. Some time must have been consumed by the Supervisors of the concerned centres to register the objections of the candidates, then for conveying the same to the Control Room set up by the Commission. In the Control Room also some time must have been consumed by the Chairman and the Controller of Examination to verify the correct spellings from the original manuscripts of the said questions and, thereafter, conveying the same to the supervisory staff. Thereafter, the supervisory staff would also have taken some time for making the announcements for correcting the spellings of 12 mis-spelled questions. In all probability, each question must have taken at least one minute for being corrected. In this way, atleast 12 minutes out of total two hours must have been wasted. It is not the case of Commission that the time fixed for completion of such papers was ever extended. The non-extension of time also suggests that in the examination centres announcements for correction of spelling mistakes may not have been actually made at all. From whatever angle we look at the issue, only one conclusion we can reasonably reach is that all the questions, which have spelling errors, must be treated as wrong questions and, therefore, should also be deleted.

Likewise, the petitioners objected 8 questions of Zoology subject-paper; 11 questions of Geology; 9 questions of Geography; 8 questions of Chemistry; 6 questions of Agriculture; 6 questions of Mathematics; 2 questions of Mechanical Engineering and 1 question of Law, on the ground of being invalid because of spelling mistakes/printing errors, According to the Commission, these 55 questions of above-said eight subjects have not been deleted, as the same were also got corrected through announcements made in the Examination Halls and the mistakes were intelligible to the candidates having knowledge of the subject. For the reasons already given, the stand of Commission in this regard cannot be accepted and, therefore, the above- referred 55 questions, in addition to 11 pointed out questions of Sociology subject-paper, in all also deserved to be deleted, besides the already deleted questions."

The learned Single Judge is right in making above observations.

"50. But there is an additional factor also which supports this view. It is clear from the fact that after the receipt of the complaints, the Commission had issued Press Note on July 6, 2005 and assured the candidates that the Commission would look into the matter and no injustice would be caused to them. The Commission also obtained expert advice and thereafter suo motu decided to

delete certain questions by allotting those marks pro-rata to remaining questions. It is, therefore, clear that even according to the Commission, some action was necessary, after the examination was over.

51...

52. In the present case, certain corrective steps were taken by the Commission suo motu on the basis of expert-opinions. Again, when the High Court felt that some more actions were required and issued certain directions, the Commission accepted the order passed and directions issued by the learned Single Judge and did not challenge it. In our opinion, the approach adopted by the Commission cannot be said to be unreasonable or irrational. In fact, in such a situation, appropriate remedial measures can always be taken by a Court of Law.

53. In *Kanpur University and Others Vs. Samir Gupta and Others*, AIR 1983 SC 1230 : (1983) 2 SCALE 89 : (1983) 4 SCC 309 : (1984) 1 SCR 73 , Combined Pre-medical Test was taken by the University for admission to medical course. Objective type of questions were set up and four options were indicated, three being wrong. It was held by this Court that the Court will presume key answers to be correct and proceed to examine accordingly. But if any of the key answers is proved to be "demonstrably wrong" or is such that "no reasonable body well-versed in the subject would regard as correct", it would be unfair to penalize students for not giving an answer that accords the key answer. In such a situation, a Court of law can issue an appropriate direction. Speaking for the Court, Chandrachud, C.J. said:

"If the State Government wants to avoid a recurrence of such lapses, it should compile under its own auspices a text-book which should be prescribed for students desirous of appearing for the combined Pre-Medical Test. Education has more than its fair share of politics, which is the bane of our Universities. Numerous problem are bound to arise in the compilation of such a text-book for, various applicants will come forward for doing the job and forces and counter-forces will wage a battle on the question as to who should be commissioned to do the work. If the State can succeed in overcoming those difficulties, the argument will not be open to the students that the answer contained in the text-book which is prescribed for the test is not the correct answer. Secondly, a system should be devised by the State Government for moderating the key answers furnished by the paper setters. Thirdly, if English questions have to be translated into Hindi, it is not enough to appoint an expert in the Hindi language as a translator. The translator must know the meaning of the scientific terminology and the art of translation. Fourthly, in a system of "Multiple Choice Objective- type test", care must be taken to see that questions having an ambiguous import are not set in the papers That kind of system of examination involves merely the tick-marking of the correct answer, It leaves no scope for reasoning or argument. The answer is "yes" or "no". That is why the questions have to be clear and unequivocal. Lastly, if the attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the

examination, prompt and timely decision must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it"..

54. In *Abhijit Sen and Others Vs. State of U.P. and Others*, AIR 1984 SC 1402 : (1983) 2 SCALE 912 : (1984) 2 SCC 319 : (1984) 1 SCR 983 : (1984) 16 UJ 218 , the principle laid down in *Samir Gupta* was reiterated and was extended to "tricky questions" also.

55. In our judgment, the learned single Judge considered the controversy in its proper perspective, and in the light of mistakes/errors/inaccuracies, issued certain directions which benefited the student-community. As mentioned by us in the earlier part of the judgment, the said exercise had been undertaken by the Commission and merit list was redrawn. Some candidates who had earlier been declared disqualified were held to be qualified and notification to that effect was also issued. To us, no exception can be taken against such action."

10. The learned standing counsel for the second respondent, on the other hand, relied on a decision of this Court in *C.M.R. Velu v. Convenor, EAMCET-2005, JNTU, Hyderabad* and another. In the said decision, which arose out of an examination for EAMCET-2005, this Court considered similar arguments in respect of question Nos. 18 and 20 of Botany paper, Question Nos. 44, 49 and 80 of Zoology paper and Question No. 153 of Chemistry paper and dismissed the writ petitions by relying on the decision of a Division Bench of this Court in *Convenor, EAMCET-1992 V.A. Swapna*, which culled out the principles in relation to the answers to the questions given in the examination of EAMCET and observed thus:

"5. In *Kanpur University and Others Vs. Samir Gupta and Others*, AIR 1983 SC 1230 : (1983) 2 SCALE 89 : (1983) 4 SCC 309 : (1984) 1 SCR 73 , the Supreme Court held that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong, this is to say, it must be such as no reasonable body of men well versed in the particular subject would regard as correct. In case of doubt, the key answer would have to be preferred. In *Convenor, EAMCET-92 v. A. Swapna* (supra) a Division Bench of this Court, after examining various decisions, culled out the principles deducible therefrom as follows:

(1) In spite of there being bar of revaluation of the answer scripts, the examinees are entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India and ask the Court to satisfy itself whether the key answers are correct and complete or wrong.

(2) If the key answer is demonstrably wrong and the student's answer is correct, the candidate should be given mark (which can be called as Category "A").

(3) If the student's answer is complete, while the key answer is incomplete

though not wrong, the student gets mark (referred as Category-"B").

(4) That in case the question is vague and ambiguous admitting of more than one answer, if the answer given by the student is correct, the student should be given a mark even though the student's answer is not one of the suggested answers in the key (Category "C").

(5) As conceded by the Convenor, in his counter affidavit in the case of question yielding more than one correct answer, if the student gives any one of the answers suggested in the key, he will be entitled to the mark. (Category "D").

(6) If the student's answer is incorrect or incomplete, while the key answer is complete, the student cannot get mark and it need not be proved that the key answer is wrong (Category "E")."

11. The other decision in *Lavu Narmada v. Convenor, EAMCET-06, JNTU, Hyderabad* relates to a challenge to the action of the respondents in not deleting questions 46, 47 and 61 of Zoology paper in Eamcet-2006 and the writ petition was dismissed by observing as follows:

"16. The EAMCET Committee is the committee constituted under the Andhra Pradesh Common Entrance Test for entry into Engineering, Architecture, Pharmacy, Agriculture, Medical and Dental Courses Rules, 2004 and it is empowered to prescribe the syllabus. The committee will consist of various experts. Syllabus is notified by the EAMCET Committee, in which body, there are academic experts and the said body is presumed to have academic expertise in prescribing the syllabus. Even after filing of the objections to the draft key published, objections were considered with reference to very same questions. A perusal of the said record discloses that the experts have consciously overruled objections and taken into account said questions for valuation. In that view of the matter, merely because the questions are not in tune with the detailed syllabus, which was earlier notified prior to the revision and published in the textbooks by the Telugu Academy, it cannot be said that the said questions are outside the syllabus, notified by the EAMCET Committee.

While dismissing the said writ petition with the above observations, a learned single Judge of this Court followed the following judgments:

- i) *Convenor, JNTU V.C. Swarnalatha*;
- ii) *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheith*; and
- iii) *S.S. Sudhakar v. The convenor, EAMCET.*"

12. Though the learned standing counsel relied on a decision of this Court in *M.B. Shashank Mathur v. NTR University of Health Sciences, Vijayawada*, this Court feels that the ratio laid down therein is too broad and not directly relevant to the examination of the point involved in the present writ petition.

13. In view of the examination of the issue raised by the learned counsel for the petitioner with regard to the answer to the question framed in the objective type question No. 30, the writ petition is liable to be dismissed on the basis of the ratio laid down in the judgment of the Supreme Court in Pankaj Sharmas case (supra). The objective type question cannot be termed as a wrong question, question having more than one answer or it is not sufficiently intelligible. The petitioner failed to show that the key answer is proved to be demonstrably wrong or is such that no reasonable body well versed in the subject would regard as correct, as held by the Supreme Court in Samir Guptas case (supra) and quoted with approval in Pankaj Sharma case (supra).

14. In the facts and circumstances of the case, the writ petition is liable to be dismissed and it is accordingly dismissed. The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No order as to costs.