

(2023) 08 DEL CK 0178

In the Delhi High Court

Case No : Civil Writ Petition No. 10790 Of 2023, Civil Miscellaneous Application No. 41821 Of 2023

Pranamita Chakrabarti

APPELLANT

Vs

National Testing Agency

RESPONDENT

Date of Decision : 18-08-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2023) 08 DEL CK 0178

Hon'ble Judges : Purushendra Kumar Kaurav, J

Bench : Single Bench

Advocate : Nishant Khatri, Mohinder J.S. Rupal, Hardik Rupal, Sanchpreet Kaur, Monika Arora, Subhrodeep Saha, Yash Tyagi

Final Decision : Dismissed

Judgement

Purushendra Kumar Kaurav, J

1. The petitioner, vide the instant writ petition seeks to challenge the result of the Common University Entrance Test(PG)(hereinafter referred to as "CUET (PG)") published by respondent no.1-National Testing Agency (hereinafter referred to as "NTA") on 20.07.2023, being violative of CUET(PG) rules as provided in information bulletin and sought directions against respondent no.1-NTA for publication of fresh result on the basis of normalisation procedure based on the percentile score.

2. Learned counsel appearing on behalf of the petitioner submits that the petitioner appeared in CUET (PG)-2023 examination and the result thereof was declared on 15.07.2023.

3. He also submits that the petitioner after perusal of the result realized that the result was declared without adopting the normalization procedure based on percentile score. She made a detailed representation via email dated 26.07.2023 to the concerned authority highlighting the issue involved.

4. Since the said representation was not acted upon, therefore, she has filed the instant writ petition.
5. Learned counsel appearing on behalf of the petitioner submits that the Information Bulletin, Appendix-IV prescribes for procedure to be adopted for compilation of NTA scores for multi-session Papers (normalization procedure based on percentile score).
6. According to him, under the facts of the instant case, when the examination was conducted in multiple shifts and a number of candidates appeared across the country, therefore, in all fairness, the stipulated procedure under Appendix-IV ought to have been followed.
7. He further states that as the procedure contemplated under Appendix-IV is not followed, the same is a violation of Article 14 of the Constitution of India; and therefore, interference is called for.
8. After issuance of notice, the respondents have filed their counter affidavit and have justified their actions on the basis of the observations made by the expert committee. According to the learned counsel appearing on behalf of the respondents, an expert committee was constituted by respondent no.1-NTA to meticulously examine the feasibility of the application of the normalization procedure based on percentile score.
9. The respondents have also submitted that on the basis of the expert opinion, it was decided by the respondent no.1-NTA that it would be judicious not to implement the normalization procedure based on percentile score and to declare the actual scores of the candidate.
10. Learned counsel appearing on behalf of the respondents places reliance on a decision of the High Court of Kerala at Ernakulam in the case of 'Shreya Suresh vs. Union of India and others' 2021 SCC OnLine Ker 794.
11. The respondents have also justified their action while placing reliance on the decisions of this court in the cases of 'Debjyoti Ghosh v. Jawaharlal Nehru University and Anr.' 2023:DHC:001259, 'Buddhabhushan Anand Londhe and Another v. Union of India & Ors.' 2023:DHC:3121 and 'Omansh Thakur v. Union of India & Ors.' 2023:DHC:4968.
12. I have heard the submissions made by learned counsel appearing on behalf of the parties and perused the record.
13. The petitioner appeared in CUET (PG)-2023 examination for the English subject. The concerned examination is conducted by respondent no.1-NTA which is established by the Ministry of Education, Government of India.
14. Respondent no.1-NTA is an independent, autonomous and self sustained organization which is registered under the Societies Registration Act, 1860. The respondent no.1-NTA has been mandated by the Ministry of Education and University Grants Commission to conduct CUET examination for admission into

Post-graduate programme in Central Universities and under the Ministry of Education and other participating University/ Institution/ Organization/ Autonomous Colleges.

15. For the Academic Year 2023-24, CUET (PG)-2023 examination has been conducted for about 4,58,774 unique registered candidates between 05.05.2023 and 06.07.2023. The detail of the candidates, dates of examination etc. are mentioned in paragraph no.11 of the counter affidavit, which reads as under:-

Phase

Dates of Examination

No. of candidates with multiple Test Papers (Approx. 8.77 lacs)

Phase 1

(13 days)

5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15,

16 and 17 June, 2023

8.3 Lacs (Approx.)

Phase 2

(10 days)

22, 23, 24, 25, 26, 27, 30 June,

2023 and 06 July, 2023

46 thousand (Approx.)

16. As per the record of respondent no.1-NTA, 31537 candidates registered and 19982 candidates appeared for English subject (Code:LAQP01) and the said examinations were conducted on 07.06.2023, 24.06.2023 and 30.06.2023.

17. The respondents have justified their action on the ground that the implementation of the normalization procedure on percentile scores encountered limitations due to specific prerequisites and the division of candidates.

18. It is stated on behalf of the respondents that the CUET (PG)-2023 examination has been conducted in multiple shifts and the number of candidates in the shifts varied widely. The number of candidates in each shift in the examination was not homogeneous and was actually very different across various shifts.

19. They therefore submit that an expert committee was constituted by respondent no.1-NTA comprising technical experts to meticulously examine the feasibility of the application of the normalization procedure in CUET (PG)-2023 examination.

20. The expert committee after examining the diversity in the size and characteristics of these shifts, analyzed the data regarding the number of candidates allocated in various shifts, recognized the considerable inconsistency of the number of candidates in various shifts, and opined that it would be appropriate to evaluate the result by declaring the raw (actual) scores as candidates final marks.

21. The observations of the Expert Committee are reproduced in paragraph no.18 of the counter affidavit, which read as under:-

- The normalization procedure requires that the candidates be divided in almost equal numbers, Category wise and gender-wise;
- The Examinaion was conducted in multiple shifts as the Examination conducting vendor could not provide computer nodes on the required dates of the examination;
- The Committee was briefed by the Subject Experts who were entrusted with the responsibility of making question papers across multiple shifts and provided the equivalence of Questio Papers in terms of Syllabus as well as the difficulty level.
- Recommendation that the Scores be declared as marks obtained by the candidates as any procedure followed for normalization would be very unfair to the candidates of different shifts."

22. It is thus, seen that respondent no.1-NTA has taken a conscious decision not to implement the normalization procedure on the basis of the expert opinion and to declare the result of raw (actual) scores of the candidates based on their performance and their respective examination.

23. Learned counsel appearing on behalf of the petitioner highlights various anomalies to challenge the impugned action of non-application of normalization procedure. He tries to indicate that under the facts of the instant case, the action of respondent no.1-NTA in not following the normalization procedure is actually leading to various anomalies and arbitrariness.

24. The fact remains that in the entire writ petition, there are no allegations with respect to any malafides or otherwise in the part of respondent no.1-NTA. It is to be noted that a large number of candidates appeared in the said examination and the result of all those candidates has been declared while following a uniform pattern.

25. It is not the case that respondent no.1- NTA without there being any application of mind has abruptly taken a decision not to apply the normalization procedure.

26. The Hon'ble High Court of Kerala at Ernakulam in the case of Shreya Suresh (supra) in paragraph no. 10 and 11 has held as under:-

10. I have considered the contentions advanced on all sides. Ext.P5 does provide for a procedure for normalization and a formula for fixing the percentile of marks. However, it is the specific contention of the 3rd respondent that due to the large variation in the number of candidates who appeared in the different shifts, the normalization procedure as provided in Ext.P5 became unworkable. It is stated that the 3rd respondent, therefore, considered the issue and found that such normalization would not be practicable in the instant case. The petitioner has raised no discernible grounds on mala fides. It appears that the intention while publishing Ext.P5 was to conduct the entrance examinations on a single day. If that be so, the question of normalization would not have arisen at all. It was only due to the lock-down and the pandemic situation that there was a requirement to conduct the entrance examination on 3 separate days and with 6 shifts. It appears from the counter affidavit placed on record by the 3rd respondent that the issue with regard to normalization was specifically considered by the 3rd respondent and it was decided that such normalization would not be appropriate or desirable in the given circumstances. It is stated that the expert opinion to the effect that the question papers administered to candidates across various shifts were comparable and were of the same level of difficulty was also before the committee which considered the issue and it was on the basis of such expert opinion that the decision not to normalize the scores had been taken by the respondents.

11. The examination admittedly had been conducted for admission to UG courses to the Universities under the ICAR. Admittedly, several candidates had participated in the selection and the admission procedure is almost complete. At this stage of the proceedings, if this Court were to entertain the challenge of a solitary petitioner and to upset the entire procedure, that would work out grave injustice to the selected candidates who are not parties to this writ petition. Moreover, the modalities of conducting a selection are liable to be finalized after consideration of the relevant aspects by expert bodies.

27. The said case was relating to ICAR-UG 2020 examination conducted by respondent no.1- NTA. In the said case the Hon'ble High Court of Kerala at Ernakulam, a similar challenge was made with respect to non-following the normalization procedure. The said High Court has held that several candidates had participated in the selection and the admission procedure in that case was almost complete; and therefore, no interference was called for. More so, the said High Court has also noted the modalities of conducting a selection are liable to be finalized after consideration of the relevant aspects by expert bodies.

28. It is thus, seen that it is not only the aspect of completion of the selection process was over, therefore, an interference was not made by the High Court of Kerala at Ernakulam but the other aspects of the matter were also considered.

29. This court in the case of Debjyoti Ghosh(supra) has also considered the scope of interference with respect to the opinion of experts particularly of the examining bodies. In the said case, it has been held as under:-

"19. It is not advisable for courts to interfere with the functioning of the educational institutions, which have expertise in their field. It would be highly inappropriate to tinker with the decision of the educational bodies without realizing the pros and cons of the situation. There is no allegation of mala fide against the University or its officers. The Academic Ordinance is applicable uniformly to all the students. Any interference on the ground of one reason or the other would dilute the sanctity of the Academic Ordinance. The same is not permissible in exercise of power under Article 226 of the Constitution when the validity of the Ordinance remained unchallenged. Reliance can be placed on the decisions of the Hon'ble Supreme Court in the cases of The University of Mysore and Anr vs C. D. Govinda Rao and Anr, Maharashtra State Board Of Secondary and Higher Secondary Education vs Paritosh Bhupesh Kumar Sheth Etc., Bhushan Uttam Khare vs Dean, B.J. Medical College and Ors., Medical Council Of India vs Sarang and Ors. and U.P. Public Service Commission v. Rahul Singh."

30. This court in the case of Baba Hira Das Ji Ayurvedic Medical College And Hospital v. Union of India and Ors. 2023:DHC:000742 has considered various earlier decisions of the Hon'ble Supreme Court on this issue and has held that normally the courts should be slow to interfere with the opinions expressed by the experts in academic matters. Paragraph nos. 17 and 18 of the said case are reproduced as under:-

"17. It is well settled in the law that normally the courts should be slow to interfere with the opinions expressed by the experts. It would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. [See:- University of Mysore in C.D. Govinda Rao and Another]

18. The principles of law laid down in the case of University of Mysore (supra) is being constantly followed by the Hon'ble Supreme Court in all subsequent decisions. [See:- M.C. Gupta (Dr.) v. Dr. Arun Kumar Gupta, J.P. Kulshrestha (Dr.) v. Allahabad University, Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, DalpatAbasahebSolunke v. Dr. B.S. Mahajan, Neelima Misra v. Harinder Kaur Paintal, Bhushan Uttam Khare v. B. J. Medical College,Chancellor v. Dr. Bijayananda Kar, J&K State Board of Education v. Feyaz Ahmed Malik, Dental Council of India v. Subharti K.K.B. Charitable Trust, Medical Council of India v. Sarang, Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University, B.C. Mylarappa v. Dr. R. Venkatasubbaiah, All India Council for Technical Education v. Surinder Kumar Dhawan]."

31. In view of the aforesaid, this court does not find any reason to interfere into the result declared by the respondents at the instance of the petitioner.

32. The instant writ petition is, therefore, dismissed.