

(1991) 04 OHC CK 0043

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 3905, 3970, 3972, 3978, 4077, 4084, 4398, 4598, 4642, 4666 and 4770 of 1990 and 182, 671, 703, 704, 888, 995, 1011, 1928, 1168 and 1257 of 1991

Priyadarshini Acharya and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 02-04-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1991) 1 OLR 514

Hon'ble Judges : R.C. Patnaik, J;A. Pasayat, J

Bench : Division Bench

Advocate : B.M. Patnaik, P.K. Choudhury and S. Mohanty, Y. Das, N.C. Mohanty, Ashok Mohanty, S.S. Sahoo, P.K. Dash, S. Mohanty, S.N. Kar, S.C. Misra, B.C. Mohanty, R.K. Mohanty, P.K. Misra, N.C. Pati, A.K. Nanda, B. Sahoo, R.N. Dash, K.N. Sinha, T. Sinha, J.R. Mohanty, B.L.N. Swamy, B.V.B. Das, A.K. Rath, U.C. Panda, M. Das, T. Patra, R.K. Nayak, M.N. Das Mahapatra, M.M. Das, B. Pradhan, J. Patnaik, B. Dash, R.C. Mohanty, D.K. Mohanty, P.C. Acharya, A.K. Misra, S.K. Das, S.B. Jena, S. Ch. Sahoo, S.K. Nayak, S.K. Sahoo, C.V. Murty, C.M.K. Murty, S.K. Rath, P.C. Chinchani and Party in Person in OJC 1168/91, for the Appellant; Government Advocate and Addl. Standing Counsel, for the Respondent

Judgement

R.C. Patnaik, J.—The petitioners in this batch of writ applications have assailed the valuation, of the performance at the entrance examination, 1990 held for admission to the M B B.S./B.D.S. Courses in the three Medical Colleges of the State and ancilarily the decision of the Selection Board in not selecting them for admission.

2. Every year the State Government conducts an annual entrance examination for selection of candidates for admission to MBBS/BDS courses. For the 1990 entrance examination, the question paoer contained 150 multiple choice objective questions - each question carrying one mark. Four alternative answers were Indicated against each question, one of which was the correct or most appropriately correct answer to the question. The candidate was required to

cross the alphabet box which stood for the answer, which he thought the correct or the most appropriately correct answer.

3. There is no controversy as to most of the questions and the alternative answers. The controversy has arisen in regard to some questions and the alternative answers indicated. In course of hearing, the arguments were ultimately confined to and to cussed on eight questions, namely, question Nos. 22, 26, 56, 67, 77, 126 and 133.

4. It has been contended and sought to be demonstrated that either some- of the questions are wrong, none of the alternative answers is a correct answer or the alternative answers contained more than one correct or most appropriately correct answer. Hence, valuation of the answers given by the petitioners has been incorrect.

5. The opp. parties while traversing the contentions have averred that the answer indicated by the candidates should tally with the key answer and even if two alternatives could be correct or most appropriately the correct answer, the answer indicated by the candidate should tally with the key answer. Otherwise he would not be emitted to any credit.

6. It has been contended by the learned Government Advocate that in a multiple choice objective test, the questions are set by the examining body and answers are indicated in accordance with its wisdom and answers furnished cannot be assailed before a Court of law as not being reasonable. What is necessary to be established is to clearly demonstrate the key answers to be wrong. Even if two of the answers indicated could be the correct answers, unless the answer selected by the examining body as the correct answer is shown to be incorrect, it is not open to The candidate to contend that the answer indicated by him is also correct. Where none of the answers is correct, one most approaching correctness is the correct answer and if that has been selected by the examiner as the key answer, the answer given by the candidate should tally with the key answer.

7. No doubt, it is true, that the Court being not an expert in such technical matters should not ordinarily sit in judgment over the views of the examiners. But the settled position of law is that if the expert body takes a view which no reasonable person could take, the Court should interfere. Where the procedure or the system is demonstrably unreasonable and operates harshly, it would not be legitimate to contend that the Court should fold its hands and refuse to interfere. It was observed by Lord Denning in *Baldwin Francis Limited v. Patents Appeal Tribunal* (1959) 2 All ER 433 :

"...even on technical matters a Court can hear argumenst of counsel and consult text books, technical dictionaries etc. or even be informed through" assessors, and the Court's Jurisdiction is not to be shut out merely on the ground of technicality of the matter..."

Hence, on the one side is the principle that we should not lightly interfere with

the the views of experts and examining bodies, and" on the other side is the view that where the method adopted or decision- taken is clearly unreason- able and perverse and is clearly demonstrated to be wrong, the Court, should not act as an unconcerned bystander.

8. A multiple choice objective test re different from" the traditional system-of examination which requires the candidates to give essay- type answers, in a multiple choice objective test, one of the answers indicated is the correct or most appropriately correct answer and the rest are either wholly incorrect, or incorrect though appear to be correct. The answers to questions as indicated muss not carry two correct answers enabling the examiner to select one as the key answer. That would introduce an element of gamble, for, even if the candidate indicates the other correct answer which is not the key answer chosen, he does not get any credit for the same. The principle that the views of the examiner could only be assailed if the answer is dearly demonstrated" to be wrong, does not apply to such at situation. The candidate was not taking part in a tottery like some cross- word puzzles in newspapers and periodicals announcing prizes for the answers which tally with those selected by the organisers. There it is permissible that unless the answer indicated by the participant tallies with the answer selected by the organrsers, he is not eniltitled " to a prize though his may be the correct one because there were other correct clues and the one indicated by him did not tally with the selected one. What is permissible in a lottery is not permissible in text where performance of candidates is judged One of the answers indicated should be the correct one and the rest are either incorrect or though appear to be correct but not correct. We with respect cannot subscribe to the view taken in Kumari Anjali Saxena Vs. The Chairman, Professional Examination Board, Bhopal and Others, where it has been observed that the key answers selected by the committee has to be accepted as the correct answer for the purpose of valuation unless it is shown to be entirely incorrect. The other three answers by some process of reasoning may also be shown as the possible answers to the question and those may not be wholly incorrect. Nevertheless, under the scheme of the examination, the key answer cannot be rejected unless it is shown to be entirely incorrect. We are of the view that the examiner and the examining body should not include in the answers indicated two-correct answers, for, what can explain the grievance of the candidate when there are two correct answers amongst the four answers indicated, and if despite having indicated the correct answer, he does not get any credit because the other answer, not the one indicated by him has been chosen by the examiner as the correct answer, it would be ounreasonable.. Such an element of gamble in selection of candidates by an examination should be held impermissible and be eschewed.

9. In an objective test, the choice given should be such that only one alternative could be said to be the correct alternative. Rightly had the examining body indicated in instruction No. 3 that one of the answers indicated is the correct answers indicated "is the correct answer and not the other three. We quote instruction No. 3,

"3. The set containing multiple choice type of questions "has one correct or one most appropriately correct answer to each question out of the four suggested answers given under a, b, c or d"

This accords with out aforesaid reasoning.

With the aforesaid prefatory observation, we proceed to grapple with the specifics.

10. In course of hearing "counsel for the State justly and fairly conceded that the key answer was not the answer to question No. 6- So oalso he did as regards question Nos. 22 and 26.

11. Lengthy submissions were made on both sides as records question Nos. 56, 67,77, 126 and 133. let us deaf with them one by one.

Q. No 56 : Crignard Reagent reacts with $\text{CH}_3 \text{OH}$ to produce

- (a) $\text{C}_2 \text{H}_6$
- (b) $\text{C}_2 \text{H}_4$
- (c) $\text{C}_2 \text{H}_4$
- (d) $\text{C}_2 \text{H}_8$

The key answer is (a) $\text{C}_2 \text{H}_6$. It has been contended that since no inention was made of the specific alkyl group present in Grignard"s Reagent, depending upon the nature of the allyl group attached to "magnesium, the product may be ethane, mytharre and propane respectively and the answers could be (a), (b) and (d). In answer thereto, it was averted by the opp. parties that the text book of Chemistry intended for plus 2 science students- written by Ch. Bichitrnanda Nanda mentions only one example of Crignard"s Reagent, i.e , ethyf magnesium halide tide and its reaction with methyl alcohol to form ethane. Nothing, more regarding, Grigrard"s Reagent has- been stated and, therefore,, when specific name is not given, Grignard"s Reagent may refer to "ethyl compound only" hence the key answer $\text{C}_2 \text{H}_6$ is correct. Argumsm of the opp. parties with a view to making, the key answer plausible proceeds on several assumptions, namely, firstly knowledge of the candidates was assumed to be limited, they are assumed to have read the book authored by Bichrtranartda Nanda and no other and thirdly, Grignard"s Reagent in the question refers only to etiyh compound. We are not satisfied with the aforesaid explanation. They key answer (a) cannot be justified as the only correct answer to the question.

Q No. 67 : When an anion is formed from a nautral atom

- (a) tonic radius increases
- (b) ionic radius decreases
- (c) ionic radius does not change

(d) energy is released.

The key answer has been indicated as (b). It has been contended that energy is also released when an anion is formed from a neutral atom. Our attention has been invited to a Text Book of Organic Chemistry by Dr. Harbans Singh and Dr. M. M. N. Tandon, Vol-I, page 89. It leaves no manner of doubt that energy is released during the process. Hence, as to the candidate who had answered the question as (d) cannot be denied, in our view, one mark for his answer.

Q. No. 77 : A carbon-carbon double bond is formed by the overlap of

- (a) two sp^2 hybrid orbitals of each carbon atom
- (b) two sp^2 hybrid orbitals of each carbon atom
- (c) sp^2 hybrid orbital of one carbon atom and sp^2 hybrid orbital of the second carbon atom
- (d) sp^2 hybrid orbital of one carbon atom and a pure p-orbital of the second carbon atom.

The key answer, it is stated by the opposite parties, is (b). It has been contended by the petitioners that a carbon atom can form different types of chemical bonds with other carbon atom in various Organic Compounds. They are (a) single bond, (b) double bond and (c) triple bond. Double bond always means two bonds, one sigma bond and the other " π " bond. When the question is in which way carbon-carbon double bond is formed by overlapping, the answer is none of the answers indicated, but is "by the overlapping of (SP^2 - SP^2) hybrid orbitals and ($-P$) pure orbitals. The Text Book of Chemistry produced before us did not justify the answer indicated in Clause (b) as the correct answer.

Q. No. 126 : Which is the most important factor in the origin of species ?

- (a) Mutation
- (b) Isolation
- (c) Natural Selection
- (d) Variation

Various text books on Botany including the books prescribed by the University for +2 science students were placed before us for the purpose of getting at the answer. It has been contended by the counsel for the petitioners that "natural selection" and "variation" are the important factors in the origin of species. No single factor can be considered to be the most important factor. It has been argued that even some text books do not mention "Isolation" as one of the factors. Our attention has been drawn to Process of Organic Evolution by Stebbins, where he has observed :

" The modern synthetic theory of evolution recognises five basic types of

processes : Gene Mutation, Changes in Chromosome Structure and Number, Genetic recombination, Natural Selection and Reproductive Isolation. The first three provide the genetic variability without which change cannot take place, natural selection and isolation guide populations of organisms into adaptive channels."

He has further observed :

" At the outset we must recognise that at least in higher organisms, and perhaps in micro-organisms as well, the three processes, mutation, genetic recombination and natural selection, are equally indispensable for evolutionary change to take place. Speculations as to which of the three is the most important are completely pointless."

In answer to the aforesaid, the learned Government Advocate placed before us an observation from *Evolution and animal Life* by Jordan and Kellogg, which reads as under :

"...the factor of the segregation or isolation of groups of individuals must be taken into account in any discussion of species-forming causes. This factor has long been recognised by biologists, that phase of it, and undoubtedly the most important of its several phases, called geographic or topographic isolation or segregation...."

That it is one of the factors-an important factor in the process of evolution cannot be denied and questioned, but so far we read the books, no authority has said that "isolation" is the most important factor in the origin of species. The aforesaid observation of Jordan & Kellogg is a mere opinion and no other book taking that view has been brought to our notice. On the contrary, the authorities hold that like "mutation" and "natural selection", "isolation is a factor in evolution so that races are prevented from crossing between themselves. Some authorities have gone to the extent that "mutations" are the raw materials for evolution and other forces of evolution like "natural selection, "genetic drifts", "Isolation" etc. operate on mutations to bring about divergence in the naturally inter-breeding populations. Amongst the authorities there is no unanimity that "isolation" is the most important factor in the origin of species, albeit it is an important factor. Therefore, when there is no unanimity and the topic was controversial, should that have been put to +2 science students for answer? Except Jordan & Kellogg who have indirectly referred to "Isolation" as one of the important factors, no other authority has considered "isolation" as the most important factor. "Isolation" could be an important factor like others or it could be more important than another, but when there is not unanimity amongst authorities, it was not legitimate to ask candidates who had completed +2 science course to answer if "Isolation" is the most important factor. Even some books do not mention "isolation" as one of the factors. Some authorities have laid stress on "mutation" as the most important factor. On such a topic no clear-cut answer is possible. The topic was appropriate for an essay type question but

not objective test. We, therefore, do not accept the contention of the opposite parties that those who did not indicate "isolation" as the correct answer should be denied the credit of one mark. In this connection, we may observe that we have referred to Text Book of Organic Evolution by Dr. V. B. Rastogi, Cytology, Genetics Evolution, Ecology, Biotechnology and Biostatistics by P. K. Gupta, Higher Secondary Botany by Dr. Dinabandhu Misra, Dr. Chandra Sekhar Sarangi and Sri Laxman Kumar Mobapatra, +2 Botany by Dr. Kamala Kumari Patnaik and Text Book of Zoology by R. D. Vidyarthi.

Lastly we come to question No. 133 which reads as under::

Q No. 133, The P. H. in the stomach is

- (a) 1-2
- (b) 5
- (c) 7
- (d) 9-11

P H is a scale which measures the qualitative nature of acid alkali solution present in the stomach. Hence, the question is incomplete because the question does not name the animal whose PH is indicated in the suggested answers. PH in the stomach of all animals is not the same. It varies from animal to animal. PH in the stomach of an earthworm varies from 7 to 8, trfat of a rabbit is less than 2 and that of a cockroach is different. In answer to the aforesaid, the opposite parties have indicated that PH in the stomach indicated as 1-2 is the correct answer, since that is the PH in the stomach of frog, rabbit and man. The physiology of frog and rabbit is taught in greater detail at +2 science level, and reference is made in some text books intended for +2 science students to the digestion of foodstuffs in the stomach of man. PH in the stomach of frog, rabbit and man varying from 1-2 is, therefore, the correct answer and besides it has been stated that some text books do not mention about the PH in the stomach of earthworm and cockroach. The aforesaid assertion of the opposite parties does not appear to be rational and acceptable, in the course of Pysiolgy prescribed for +2 science students is included the study of frog, rabbit, cockroach and earthworm. We have already seen that the PH in the stomach of earthworm varies from 7-8. It is no argument to say that since the PH in the stomach of frog, rabbit,, which are included in the course varies from 1-2, therefore, the question should be read as the PH in the stomach of frog, and rabbit and should not be read as the PH in the stomach of earthworm and cockroach. We reject the submission and hold that the question was incorrect.

12. The aforesaid discussion goes to indicate that eight of questions for the reasons already stated should have been excluded at: the time of valuation. But since answers given by some students have already been taken into account in respect of those questions, we direct that such of the petitioners who have incorrectly answered any or all of the aforesaid eight questions should be given

credit for the questions to which their answers are wrong or incorrect. Having regard to the margin of error, at the time of hearing, we had in limine dismissed the cases of number of petitioners who secured less than 90 marks. Some cases have been filed after the hearing and some applications were filed for intervention in this Court. We would accordingly direct that the same principle should also be applied to the cases of candidates who approached this Court either as petitioners or as interveners till 31st March, 1991, and their results shall be published after fresh valuation within 10 days from today in accordance with the direction given above.

13. We are told at the hearing that all the seats have been filled up, whereas it has been contended on behalf of the petitioners that some 22 seats which belonged to the central pool are still lying vacant. The petitioners can get benefit of the same only if those seats are released for admission of candidates who passed the entrance examination. Steps shall be taken by the State Govt. for the aforesaid purpose immediately. If the seats are released from the Central Pool, such of the petitioners or interveners who qualify for admission on merit after republication of result, shall be entitled to admission.

14. A large number of cases are being filed every year for verifying the valuation made by the examining body. In some years, there was change in valuation after the key answers were produced and the performance of the candidate was verified with reference thereto. To avoid this, a demand has been raised for publication of the key result after the examination. There is understandably opposition by the State to this demand. It is urged by the latter that the key answer furnished should not be challenged. Considering this, the Supreme Court observed in *Kanpur University and Others Vs. Samir Gupta and Others*,) that that was not the correct way of looking at these matters which involved the future of hundreds of students who were aspirants for admission to professional courses. If the key answers were kept secret, the remedy would have been worse than the disease because so many students would have had to suffer the injustice in silence. The publication of the key answers unravelled an unhappy state of affairs to which the University and the State Government must find a solution. We have noticed the controversy in relation to the answers to certain questions in this case. Such controversy and lapses can be avoided if the State Government compiles under its auspices a text book which should be prescribed for students desirous of appearing at the entrance examinations. This was precisely the recommendation of the Supreme Court in *Kanpur University v. Samir Gupta* AIR 1983 S. C. 1280. The Supreme Court recommended and we reiterate that henceforth the questions should be modulated by a body of experts chosen by the State Government and objective type questions should be set in such a manner that questions having ambiguous import are not set. Answers should contain one correct answer and the rest should be either incorrect or nearly correct leaving no scope for reasoning or argument except merely involving tick-marking the correct answer. The question, therefore, has to be clear and unequivocal and, as was recommended by the Supreme Court, we direct

that if attention of the Government or the examining body is drawn to any defect in the key answer or to any question, timely decision should be taken to declare the exclusion of the suspect question from the paper so that no marks are assigned to it.

15. With the aforesaid directions and observations, the writ applications are disposed of. There would be no order as to costs.

A. Pasayat, J.

16. I agree.