

(1998) 08 AP CK 0029

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15750 fo 1998 and Batch

R. Krishan Kumar

APPELLANT

Vs

Convenor, EAMCET 1998 JNT University, Hyderabad and
another

RESPONDENT

Date of Decision : 17-08-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 5 ALD 332 : (1998) 5 ALT 40

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : Mr. G. Vidya Sagar, for the Appellant; Mr. C. Kodandaram, SC for JNTUC and Government Pleader for Higher Education, for the Respondent

Judgement

1. The announcement of the results for the Engineering, Agricultural and Medical Entrance Test (EAMCET for short) every year invariably leads to the filing of a number of writ petitions by the unsuccessful candidates or their parents alleging several irregularities in the conduct of the test, evaluation of the answer papers and ranking of the candidates etc. This batch of writ petitions relates to EAMCET-98 which was held on 14-5-1998 the results of which were announced on 31-5-1998. Though some of the writ petitions relate to the Engineering branch also, at the time of hearing arguments no serious effort was made by the learned Counsel for the petitioners to press those writ petitions and no arguments were put forward in their support- As such only the writ petitions relating to Agriculture and Medicine are required to be considered.

2. After holding the test and before the announcement of the results, the respondents, departing from the normal practice, published the key answers on 21-5-1998 indicating therein that 11 out of the total number of 200 questions in the question paper are proposed to be deleted and inviting objections thereto from the candidates within three days. On receipt of the objections/representations from the candidates and after considering the same, the

respondents deleted 12 more questions. Thus, in all, 23 questions were deleted and the answers were evaluated and marks were awarded for the remaining 177 questions only for all the candidates. The marks secured by the candidates for 177 questions were proportionately increased to 200 and the ranking was made on that basis. The 23 questions were deleted on various grounds, namely, that some of the questions were defectively framed, that the key answers for some were wrong, that for some questions, there was more than one correct answer, that some questions were out of syllabus, that there were printing mistakes in either the Telugu version or the English version etc.

3. In these writ petitions the petitioners assail the deletion of 23 questions. Their main contention is that deletion is illegal and unauthorised as the rules of the examination do not provide for any such deletion. They also challenge the deletion of many of the questions on merits. They contend that deletion on the ground that there is more than one correct answer for the said questions is not justified and that marks should be awarded for answering any one of the correct answers. Similarly they dispute the deletion of some questions on the ground that they are out of syllabus by asserting that they are very much within the prescribed syllabus and the same is sought to be proved by reference to the prescribed syllabus as well as to some textbooks. They also questioned the deletion of some questions on the ground of printing mistakes or mistakes in one of the versions. They contend that those mistakes do not warrant the deletion of the questions altogether as students, who are familiar with the subject, can easily find out such mistakes and answer the questions despite such mistakes. They also contend that key answers to some of the questions are wrong and the answers given by them (petitioners) are correct and they should be awarded marks for such questions.

4. Normally the Courts do not examine such grievances and sit in appeal over the decision of the examining bodies which are composed of experts who are well acquainted with these subjects. All the same, considering the fact that these matters are likely to affect the future careers of the candidates, the Courts have sometimes undertaken such an exercise in their anxiety to see that no injustice is caused. Upon consideration of similar matters earlier the Supreme Court as well as the High Courts have laid down certain principles which have to be kept in mind.

5. In *Kanpur University and Others Vs. Samir Gupta and Others*, 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 rationalisation. It must be clearly demonstrated to be wrong, that 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* 1993 ALT SUPP. (1) 287 (DB), 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 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").

All these principles apply whether the questions are of multiple choice type or of fill-up blanks type."

6. The questions arising in the present case will have to be examined in the light of the principles enunciated above. Before doing so, it is, however, necessary to deal with the general objection raised by the petitioners that, in the absence of any provision in that behalf in the rules of the examination, it is not open to the respondents to delete any questions at all and such deletion is illegal and unauthorised. On the other hand, it is the stand of the respondents that though there is no express provision regarding deletion, the power to delete any wrong or defective questions is implied and inherent in the authority conducting the examination and that it is also its bounden duty to delete such questions having regard to the main object of the examination which is to select the best candidates based on merit. It is also contended for the respondents that no prejudice whatsoever is caused thereby to the candidates as the advantage or disadvantage therefrom is common to one and all and that the respondents have acted in a fair and bona fide manner in deleting the said questions after inviting objections and after duly considering the same. It is finally submitted on behalf of the respondents that such a power for deletion of defective questions has been recognised and upheld in the earlier judgments of the Supreme Court and this Court.

7. The Supreme Court in Samir Gupta's case (supra) observed that 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 and that the questions have to be clear and unequivocal and that 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. In *C. Satyendra Kumar v. Govt. of A.P.*, 1996 (3) ALD 1116 (DB) a Division Bench of this Court had occasion to consider the validity of the deletion of 38 questions out of 200 in EAMCET-96. In that case the Division Bench had to consider two alternatives which were suggested: (1) adding one mark each for the above 38 questions to each candidate and (2) ignoring the said 38 questions and valuing the paper for the maximum of 162 questions instead of 200 questions and raising it proportionately to the total marks of 200 and fixing the relative ranks by retaining the minimum cut off marks for eligibility. After considering all the pros and cons, the Court ultimately preferred the second alternative observing that it usually keeps the damage at the minimum and merit, though evencmg (sic) of a serious wrong done by the respondents 1 and 2 shall still receive its due. The Court further observed, "We do not, however, have any serious cause to doubt the deletion of the questions by the Committee of the Experts appointed by the Chairman of the A.P. State Council of Higher Education. The Court can hardly afford to entertain suspicion that the Experts Committee has wrongly assessed the questions for cancellation. When handicap is common to those who are successful and to those who are unsuccessful, to those who are high in the merit list and to those who are low in the merit list, it is not a cause for finding a serious fault with the conduct of examinations and cancel the same.

Some petitions have been filed to direct that the 38 excluded questions should also be included and answers to all 200 questions be taken into consideration. When Experts Committee, however, has found that 38 questions are fit to be cancelled, it is not understandable how one can hold that answers to those 38 questions should also be considered for evaluation of the answer scripts. We have thus no reason to direct the respondents to take such a course for determining the merit of the candidates."

8. In view of the above pronouncements of the apex Court and this Court, I am inclined to take the view that though there is no express provision for deletion in the rules of the examination, such a power to delete any defective questions must be implied and that it is also the bounden duty of the authority conducting the examination to delete such questions. It is seen from the counter-affidavits filed on behalf of the respondents that as per the directions granted by this Court and the Supreme Court in the earlier judgments, a three-tier Committee consist of a University Professor, A Degree College Lecturer and a Junior College Lecturer in the respective subjects was constituted for preparing a key which will have to be published after the test is over. The members of the said Committee were provided with the question papers and also the key prepared by the respective persons who have set the question paper. The Committee prepared a draft key

which was published on 21-5-1998 catling for objections from the interested persons on or before 25-5-1998 so as to enable the Committee to prepare the final key which will be the basis for valuing the answer scripts. It is stated that in all 629 responses were received relating to the various subjects. After receipt of the representations and objections, the Expert Committee has throughly gone through the same and prepared the final key answers along with their recommendation for deleting 23 questions for various reasons which are set out in the counter-affidavit filed on behalf of the second respondent. It is pertinent to note that no mala fides or bad faith is attributed to the Committee of Experts. It is not shown that any prejudice was thereby caused to the petitioners. On the contrary, the benefit of such deletion accrued to all the candidates uniformly thereby raising the threshold level. The petitioners cannot have any legitimate cause for complaint on this score. I am, therefore, of the considered opinion that the genera! objection raised by the petitioners for the deletion of the 23 questions has to fail.

9. It now remains to be seen how far the objections raised by the petitioners with regard to the deletion of individual questions on merits are tenable or not. The 23 questions relating to the branch of Agriculture and Medicine which have been deleted are the following:

Question Nos. 11, 15, 21, 28, 34, 51, 55, 69, 70, 96, 109, 111, 114, 134, 135, 139, 140, 156, 160, 162, 172, 174 and 186.

It may be mentioned that at the time of hearing, the learned Counsel for the petitioners have not seriously disputed the deletion of 10 questions out of the above 23 questions, viz., 15, 69, 70, 135, 140, 156, 160, 172, 174 and 186. So the controversy ultimately boils down to the remaining 13 questions only i.e., Question Nos.11, 21, 28, 34, 51, 55, 96, 109, 111, 114, 134, 139 and 162.

10. It is seen from the .counter-affidavit of the second respondent that Question Nos. 11, 21, 28 and 114 were deleted on the ground that there is more than one choice of correct answer for the said questions. If there is more than one correct answer to a question., it stands to reason that marks should be awarded to any one of the correct answers given by the candidate. In the judgment in Swapna's case (supra), it was held that in the case of a 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. The learned Counsel for the second respondent, however, contends that the said ruling was made on the basis of a concession made by the Convenor in his counter-affidavit in tliat case which is not binding and as such it cannot be treated as a binding precedent. I cannot agree. It must, therefore, be held that deletion of these four questions is not justified and those who have given any one of the correct answers to these questions must be awarded mark/ marks.

11. There was some amount of argument before me regarding some questions, which were sought to be deleted on the ground that they were outside the scope

of the prescribed syllabus. The petitioners assert that these questions are very much within the prescribed syllabus and the learned Counsel for the petitioners have endeavoured to demonstrate the same by referring to the syllabus as set out in the instruction booklet for the Entrance Test and some text-books. I am not, however, inclined to examine the same inasmuch as a Committee of Experts, who are well qualified and acquainted with the subjects concerned, have come to the conclusion that these questions are beyond the prescribed syllabus. I have no reason to doubt their competence or the correctness of their view in the matter. The claim of the petitioners for inclusion of these questions and for awarding marks to them, therefore, fails.

12. Question No.34 was deleted on the ground that the word "Carpels" was wrongly printed as "Carpets" in the English version of the question. Likewise Question No.134 was deleted on the ground that for the word "Repelled", it was wrongly printed as "Replaced" in the English version of the question. Similarly Question No. 139 was deleted on the ground that the word "Circle" was wrongly printed as "Cirle" in the English version of the question. It is contended by the learned Counsel for the petitioners that the said printing mistakes are such obvious mistakes which could have been easily detected by any student who is familiar with the subject and that there is no justification for deleting the said questions, more so as no such mistakes were committed in the Telugu version. While I find some force in these submissions, the possibility of some confusion being created in the minds of the candidates on account of these printing mistakes cannot be ruled out altogether. I am not, therefore, inclined to disturb the deletion of these three questions.

13. Question Nos.51 and 96 were deleted on the ground that the information about the answer to these questions is not to be found in the Telugu Academy text-book which is the prescribed text-book for Telugu medium students. The learned Counsel for the petitioners sought to contend that the English medium students cannot be penalised for this omission in the Telugu text-book. I am not, however, inclined to accept this submission as it is stated that the Telugu medium students are in a great majority comprising nearly 85% of the total candidates.

14. Question No.55 was deleted on the ground that the choice given confuses the student. It is contended for the petitioners that in the draft key Choice No.4 was rightly shown as the correct answer and that the deletion of the question on the alleged ground that the choice given is likely to confuse the students is not a valid ground. It is pointed out that in a test of this type the real merit of the students can be judged only by giving some misleading answers in the choice which are called distractors. I find sufficient force in this submission of the petitioners. In *G. Nalini Vs. The Director, Medical Education, Government of Andhra Pradesh and Others*, , a Division Bench of this Court observed as follows:

"One of the important criteria of a good objective type of test especially of multiple choice questions is that "it should be fairly good at evolving

"discrimination index" which means that it should be able to discriminate students of "high ability group" from those of "low ability group". For this purpose the frame of the question paper is such that for all questions there will be one most appropriate answer and the others are merely distractors. The distractors should be so framed so as to enable only a student of high ability and full knowledge of the subject to select the correct alternative i.e., the key answer and the middle or low ability group choosing the distractors."

I am, therefore, satisfied that the deletion of Question No.55 on the ground that the choice given confuses the students is not sustainable. It is not suggested that Choice No.4 given in the question is not the correct answer. It, therefore, follows that the mark should be awarded to all those who have indicated the said answer.

15. Question Nos.109, 111 and 162 were deleted on the ground that one of the two versions i.e., either the English or Telugu version of the said questions is wrong. It is contended by the learned Counsel for the petitioners that merely because one of the two versions is wrong, the candidates who have answered the questions correctly cannot be penalised for no fault of theirs. While it may be true that some candidates might have been able to answer the said questions correctly by looking into the correct version, one cannot expect all the students to examine both the versions before attempting the question. If the English version is wrong, the students, who are not acquainted with Telugu cannot obviously look into the Telugu version and vice versa. The time factor also may render it impracticable for the students to check up both the versions before attempting the question. I do not, therefore, find any illegality with regard to the deletion of these three questions.

16. Another point raised by the petitioners relates to the marking of the answers in the specially designed Optical Mark Reader (OMR) Response Sheet (Answer sheet) which is supplied to the candidates. They have expressed an apprehension that as the questions are given on both sides of the OMR Sheet, the marking or markings made on one side of the sheet may seep into the other side of the sheet thereby causing the computer scanner to commit mistakes in valuation of the answer sheets. The possibility of any such mistakes is, however, ruled out by the counter-affidavit of the second respondent wherein it is stated that the OMR sheets have been designed and printed on special paper and the impression made on one side will not interfere with the impression on the other side. It is further stated in the counter-affidavit that the use of OMR sheets and optical scanners are time-tested methods that have been successfully used by many organisations conducting entrance exams such as Banking Service Commission, Railway Service Commission etc. and the same method has been used by the CEEP under the aegis of the Government of Andhra Pradesh. There is also a request made by some of the petitioners to direct the respondents to produce their (petitioners) answer script for physical verification and for re-valuation of the same manually. It is stated in the counter-affidavit of the second respondent

that the respondents have given ample opportunity to the petitioners for recounting their marks and while recounting, have virtually re-valued the answer scripts of such candidates. The cases of all the candidates who had applied for recounting have been considered by the respondents and there are no discrepancies of whatsoever nature. It is further stated that the petitioners, having participated in the entire process and also having applied for retotalling and having failed to obtain the desired rank, cannot now challenge the deletion of 23 questions. I do not, therefore, find any justification for granting any such directions either for production of the answer sheets in Court for personal verification of the petitioners or for their revaluation as sought for by the petitioners.

17. The petitioner in WP No.I6231 of 1998 has alleged that a defective question paper was supplied to her wherein a large number of questions were repeated twice and on a complaint made by her to the invigilator about it, the correct question paper was supplied to her only at 4.15 P.M. almost at the flag end of the examination time and her request for grant of extra time was rejected. She further claims that she made a representation in this behalf to the authorities on the next day i.e., on 15-5-1998 but there was no reply. It is stated that under the circumstances she could attempt 150 questions only out of 200 questions and she secured 133.33 marks for which she was awarded rank of 6229. The petitioner seeks to draw support from the newspaper report of a recent Supreme Court judgment wherein it was held that a candidate who was supplied with a defective question paper cannot be penalised. The petitioner, therefore, claims that she must be deemed to have secured 133,33 marks out of a total of 150 only but not 200 and her rank should be re-fixed on that basis. It is further claimed that if her rank is accordingly fixed, she stands a fair chance of getting admission as she belongs to the SC category. The respondents have filed only a common counter-affidavit for all the writ petitions dealing with the contentions of the petitioners only in a general way. The counter-affidavit does not deal specifically with the allegations of the petitioner in this case. Even so I find it difficult to grant any relief to the petitioner as sought for. This writ petition is, therefore, disposed of with a direction to the respondents to consider the representation of the petitioner and take appropriate action thereon in accordance with law.

18. Before parting with these cases I feel impelled to make a few observations. Time and again this Court as well as the Apex Court have issued directions to the authorities concerned to avoid the repetition of such mistakes in setting the question papers and also in evaluation of the answer papers by devising a foolproof method or procedure. It is stated in the counter-affidavit filed on behalf of the respondents that they have, in fact, devised such a mechanism with checks and counter-checks at different levels based on the opinion of the Experts and have taken all care and caution to avoid any mistakes. However, such mistakes have occurred for reasons beyond their control and due to the magnitude of the stupendous task involved because nearly 95,000 candidates

appeared for the Engineering branch and 45,000 candidates for the Medical and Agricultural Branch. This test is being conducted every year for the past two decades or more. Neither the experience gained over the years nor the so-called foolproof procedures devised have improved matters. Every year such mistakes are repeated subjecting not only the student community but also the Courts to great stress and strain. This appears to be due to human failure rather than due to the failure of the system. If only the paper-setters and the Experts, who are concerned with finalisation of the key answers, pay a little more attention, such mistakes can be avoided. Some method must be devised to make these persons accountable for such mistakes. It must be realised by all concerned that it is in the public interest that there should be some finality attached to the results of public examinations when published. There appears to be an excessive craze not only among the students but also their parents to gain entry into these professional colleges at any cost. Parents, now-a-days, do not hesitate to spend a fortune for sending their children to high flying publicity oriented coaching schools for training. These institutions charge exorbitantly high fees from the students for coaching them for the Entrance Test and they have turned education into a big business. Some of these institutions are known to have indulged in several malpractices like bribery, leakage of question papers for boosting up their results. The students are made to slog day and night in preparation for the Entrance Test. Ultimately when they fail to secure the required rank to get admission into these professional colleges, the students as well as their parents feel cheated and they are driven to great frustration and desperation. As a last resort they run to the Courts for redressal of their grievances, real or imaginary. The situation is really disturbing. It is time that our educationists and Experts find some solution to this vexed problem.

19. The result of the above findings will be that all those who have correctly answered Question Nos. II, 21, 28, 114 and 55 should be awarded mark/marks and their ranks should be re-fixed accordingly. This exercise shall, however, be limited only to those candidates who have secured a rank below 3000 under each category in view of the fact that the total number of seats available under the branch of Agriculture and Medicine is said to be 1500 only. The deletion of the remaining 18 questions is upheld.

The petitioners, insofar as the Engineering Branch are concerned, are not entitled to any relief.

So far as the petitioner in WP No.16231 of 1998 is concerned, there will be a direction to the respondents to consider her representation and take appropriate decision thereon in accordance with law.

The writ petitions are accordingly disposed of. There will be no order as to costs.