

(2017) 05 CAL CK 0058
In the Calcutta High Court
Case No : 18303 (W) of 2016

Raj Kumar Mukherjee & Ors. Vs West Bengal Joint Entrance?
Examination Board & Ors.

Date of Decision : 19-05-2017

Acts Referred:

Citation : (2017) 05 CAL CK 0058

Hon'ble Judges : Nishita Mhatre, Tapabrata Chakraborty

Bench : DIVISION BENCH

Advocate : Bikash Ranjan Bhattacharya, ?Kartik Kumar Roy, ?Naba Kumar Das, ? Abhratosh Majumdar, ?Md. T. M. Siddique, ?Nilotpal Chatterjee, ?Debasish Ghosh, ? Subhamay Bhattacharya, ?Arkajyoti Das, ?Shankar Mukherjee, ?L. K. Gupta, ? Ekramul Bari, ?Sougata Bhattacharya, ?Sunit

Final Decision : Disposed off

Judgement

1. The petitioners in this public interest litigation allege that the wriggling tentacles of connivance, arbitrariness, interpolation and mismanagement have maligned the entire examination process pertaining to the West Bengal Joint Entrance Examination (Medical and Dental), 2016 (hereinafter referred to as WBJEEM) conducted by the West Bengal Joint Entrance Examinations Board (hereinafter referred to as WBJEEB) and have caused extreme prejudice to the students, whose hard labour of years together to emerge to be successful in WBJEEM stood frustrated and they succumbed to the illegalities perpetrated by the respondents. For redressal of such wrong caused to the candidates at large and in furtherance of the public interest involved, the guardians of some of the said candidates have approached this Court, inter alia, praying for cancellation of the said examination.

2. Records reveal that the writ petition was affirmed before this Court in the month of August, 2016. By an order dated 2nd September, 2016 this Court directed the parties to exchange their affidavits but the interim order, as prayed for by the petitioners, to restrain the respondents from counselling and/or taking any further steps pursuant to the merit list and/or the result of WBJEEM was

refused. A Special Leave Petition was preferred against such refusal of interim order but the same was dismissed on 16th September, 2016. Thereafter, the matter again appeared before this Court on 2nd December, 2016 when an application for addition of party being CAN 10727 of 2016 was allowed. Thereafter the parties exchanged their affidavits and in the midst thereof two further applications being CAN 3541 of 2017 and 3575 of 2017 were filed in the months of April, 2017 and January, 2017 respectively and the learned advocates appearing for the said applicants were also heard.

3. Mr. Bhattacharya, learned senior advocate appearing for the petitioners submits that WBJEEM was conducted by WBJEEB in a most lackadaisical and casual manner. Drawing the attention of this Court to a copy of an Optical Mediated Response Sheet (hereinafter referred to as OMR sheet) at page 56 of the writ petition, he submits that though in the question paper the first 40 questions being serial nos.1 to 40 were pertaining to the subject of Physics and the next 40 questions being serial nos.41 to 80 were pertaining to the subject of Chemistry, in the OMR answer sheet the question numbers pertaining to the subject of Physics were printed to be of serial nos.41 to 80 and the questions pertaining to the subject of Chemistry were also printed to be of serial nos.41 to 80. Such error totally confused the participating candidates. Only a few minutes prior to commencement of the examination, the invigilators in the examination hall simply asked the students to treat the questions under serial nos.1 to 40, as printed in the question sheet pertaining to the subject of Physics, to be the same as serial nos.41 to 80 in the OMR answer sheet and as such the candidates had no choice but to start answering and to complete the examination.

4. He further submits that on 9th August, 2016 WBJEEB uploaded the answer keys in its website and invited claims and objections from the students in a sealed cover to be filed within 10th to 13th August, 2016 upon payment of fees of Rs. 1000/-. Thereafter the result was published on 20th August, 2016 and the answer keys were freezed. Surprisingly, from the result it was ascertained that 8 questions carrying 10 marks in the subjects of Physics, Chemistry and Biology were dropped by WBJEEB on a purported ground that the same were controversial and ambiguous and all the candidates who had answered the said questions wrongly and the candidates who attempted the same correctly and the candidates who did not attempt the said questions were all given one mark each for all the questions. Such process as adopted by the WBJEEB is absolutely discriminatory and illegal.

5. He further argues that in the medical examination conducted by the Central Board of Secondary Education on all India basis results are published disclosing the total marks as well as subject wise marks and the percentile scores but no such procedure is followed by WBJEEB and that the candidates getting higher marks were put in lower ranks whereas candidates getting lesser marks were awarded higher rank. In aid of such submission, he draws the attention of this Court to a document in annexure "P5" and points out that one candidate having

roll no. 5818120402 who scored 172 marks was given a rank 7259 whereas one candidate, namely, Rahul Chakraborty having roll no.58511402233 who scored 172 marks got no rank and another candidate having roll no.5819110559 who scored 171.23 marks was given a rank of 2280. An OMR sheet of a candidate, namely, Pritha Chatterjee would reveal that though she did not darken the circles in consonance with her roll number, the authorities accepted the said OMR though it is categorically mentioned in the OMR sheet that incorrect darkening of bubbles would lead to invalidation of the candidature. The WBJEEB had doctored the OMR sheets to suit oblique purposes. The entire software arranging the process had been manipulated and as a consequence thereof the students getting lesser marks have come within the zone of consideration whereas the students scoring more marks have been ousted from the competitive process. Manipulation, interpolation and glaring infirmities have maligned the entire examination process and there is no alternative than to scrap the examination. Reliance has been placed upon a judgement delivered in the case of Tanvi Sarwal - vs - Central Board of Secondary Education and Ors. reported in (2015) 6 SCC 573.

6. According to Mr. Bhattacharya, WBJEEB also did not follow the reservation policy of the State and candidates belonging to OBC and PWD categories were not given their due status. One Subrata Sur who applied as a candidate under PWD category was not given his PWD status but was selected under OBC category. Protesting against such illegalities, the petitioners submitted representations but in vain.

7. He further submits that the respondent no.2A is a coaching centre mainly for minority community students who hailed from various districts of the State. Surprisingly, though they were pursuing 10+2 course in schools within their respective residential districts, all of them appeared in WBJEEM only from six specific examination centres and the percentage of success of the said candidates is very high. It would also be alarming to note that the total number of students from the respondent no.2A who have qualified in WBJEEM Examination has enhanced from 49 candidates in 2009 to 1301 candidates in 2016. Such statistics leads to a strong presumption of connivance, conspiracy and a deep rooted unholy nexus among WBJEEB and the respondent no.2A warranting a detailed investigation by an independent authority.

8. Mr. Subhamay Bhattacharya, learned advocate appearing for WBJEEB disputes the contention of the petitioners and submits that the entire pleadings in the writ petition are founded on personal grievances. The guardians of the students, who upon participation had failed to succeed in WBJEEM, had approached this Court. It is not a case that the petitioners are espousing the cause of students who are unable to pursue litigation for financial constraints or are in any disadvantaged position. As they are dissatisfied with the results of their wards in WBJEEM, they ought to have preferred independent writ petitions, ventilating their grievances and challenging the examination process. The instant writ petition is thus not

maintainable. In support of such argument reliance has been placed upon the judgement delivered in the case of R & M Trust -vs- Koramangala Residents Vigilance Group and Ors., reported in (2005) 3 SCC 91.

9. He, however, admits that the number of the questions pertaining to the subject of Physics were not properly printed in the OMR answer sheets. Though such printing mistake is regrettable, it is not that such an error was due to any inaction on the part of WBJEEB. All the students participating in WBJEEM all over the State were given OMR answer sheets which contained the same error. Furthermore, from the date of the examination on 20th July, 2016 till the date of publication of results on 26th August, 2016 no complaint regarding such printing was lodged.

10. He further submits that 876 objections were received by WBJEEB after the answer keys were uploaded in the website. The said objections were duly considered by an expert body and upon threadbare deliberation it was decided that published answer keys were ambiguous and accordingly a decision was taken to drop one question in Physics, two questions in Chemistry and five questions in Biology and to grant full marks to all the candidates for the dropped questions irrespective of whether the question was attempted or not. Unforeseen circumstances triggered such decision and there is no perversity or arbitrariness in the same as all the candidates were similarly treated. The decision of the expert committee as accepted by WBJEEB was handed over to this Court in a sealed cover.

11. Answering the complaint pertaining to one Rahul Chakraborty, Mr. Bhattacharya submits that the facts and figures given in paragraph 6(f) of the writ petition are incorrect and the actual facts are that Rahul Chakraborty obtained only 97.51 marks and as such he was given no rank since he failed to obtain the cut off marks of 125 (50% of total marks). The candidate having roll no.5818120402 obtained 136.08 marks and got the rank 7329. The candidate having roll no.5819110559 obtained 164.33 marks and got the rank 2280.

12. He further submits that upon scrutiny of the records, it has been ascertained that the candidate, namely, Pritha Chatterjee did not darken the bubble of one digit in her roll number in her OMR sheet and instead she circled the same with black pen but as the optical scanning machine which is used to scan the roll numbers, had successfully scanned her roll number, she was not disqualified. In several cases where the candidates committed similar technical mistakes, WBJEEB tried to overcome the same by adopting other means to ascertain their roll numbers. The objective of WBJEEB was not to penalise any candidate but to allow him/her to participate in a fair competition. Whenever such minor errors were noticed in the technical part, i.e. the other part of OMR answer sheet which does not contain the answers to the questions, but only personal information like booklet number, roll number, name, signature, etc. WBJEEB considered the same sympathetically and tried to give the benefit to the maximum possible extent to the concerned candidate so that the candidate gets the scope to compete in the

academic portion fairly with his/her fellow competitors. He further points out that for admission to the medical courses, counselling is conducted by the State respondents and not by WBJEEB.

13. Answering the allegation as levelled against Subrata Sur, he submits that the said candidate was a PWD (Person with Disability) candidate and was also OBC-B by caste. The cut off marks for a PWD candidate is 45% as per the provisions of Clause 10.5 of the brochure of WBJEEB whereas the cut off marks for OBC candidate is 40%. The said candidate obtained 112.08 marks which is below 45% but above 40% of the total marks and accordingly he was given OBC-B rank but not any rank under PWD and there is no infirmity in such decision. The petitioners have not even impleaded the candidates against whom specific allegations have been levelled and as such the petition suffers from non-joinder of necessary parties. In support of such argument reliance has been placed upon the judgement delivered in the case of *Girjesh Shrivastava and Others -vs- State of M.P. and Others*, reported in (2010) 10 SCC 707.

14. He vehemently opposes the allegation that the OMR answer sheets of the candidates have been doctored by WBJEEB. Denying the allegation of erroneous fixation of cut-off marks he submits that as per the guidelines of Medical Council of India, the cut off marks in Joint Entrance Examination is 50% for general candidates and 40% for SC/ST and OBC category candidates and 45% marks for PWD candidates and the same has been strictly adhered to by WBJEEB not only this year but over the past years as well.

15. He further points out that challenging the order of refusal of injunction dated 2nd September, 2016 a Special Leave Petition was preferred in which the Hon"ble Supreme Court was pleased to pass an order as follows : "Heard.

We do not see any merit in this special leave petition which is hereby dismissed.

We, however, request the High Court to expedite the hearing and disposal of the writ application pending before it as far as possible within six weeks from the date the pleadings are complete."

16. According to him in view of the said order passed by the Hon"ble Supreme Court as counselling of the candidates was not interfered with, question of cancellation of the entire examination at this stage does not occasion.

17. He submits that the entire process of scanning of the OMR sheets was outsourced to an external agency whose name and identity are kept extremely confidential. It is not possible for any person or organization to manipulate the software or the optical scanning machine for the sake of some selected candidates. Such allegations are being made by the petitioners as they have failed to obtain the requisite cut off marks in WBJEEM.

18. The learned Government Pleader representing the State respondents submits that where a procedure seeks to achieve a specific objective in furtherance of admission in a bona fide manner, by adopting uniform non-discriminatory

process, it cannot be described as arbitrary or capricious. All that can be stated is that the selection process may be acceptable to a few and may be unacceptable to others. The process to conduct an examination on the basis of multiple choice questions and through computers falls within the domain of professional experts and the role of the Courts is very limited.

19. He further submits that the mistakes as alleged are minor in nature and the same do not establish any unholy nexus. Such minor and unintentional errors do not warrant cancellation of the entire examination. The error towards incorporation of the correct question number in the OMR answer sheet was never objected to. It is only upon participation and when the results were not palatable to the students, their guardians approached this Court and such an action is impermissible in law. In support of such arguments, reliance has been placed upon the judgments delivered in the cases of Sanchit Bansal & Another -vs- The Joint Admission Board (JAB) & Others, reported in (2012) 1 SCC 157, Pradeep Kumar Rai and Others -vs- Dinesh Kumar Pandey and Others, reported in (2015) 11 SCC 493, Hooghly River Bridge Commissioner & Ors. -vs- M/s. MEP Infrastructure Development Pvt. Ltd., reported in (2013) 2 Cal LT 669 and State of Uttaranchal -vs- Balwant Singh Chaufal & Others, reported in (2010) 3 SCC 402 and Madras Institute of Development Studies and Another -vs- Dr. K. Sivasubramaniyan and others, reported in (2016) 1 SCC 454. Reiterating the argument as advanced on behalf of WBJEEB relating to non-joinder of necessary parties, reliance has been placed upon the judgment delivered in the case of Ranjan Kumar and Others -vs- State of Bihar and Others, reported in (2014) 16 SCC 187.

20. Mr. L. K. Gupta, learned senior advocate appearing for the respondent no.2A submits that the petitioners have no locus standi to prefer the instant writ petition. The respondent no.2A is a charitable institution and it provides scholarship to the meritorious students and such scholarship is funded by the Al-Ameen Mission trust. The respondent no.2A receives grant-in-aid under different schemes and such grants are sanctioned only upon proper inspection. It maintains a high level of integrity, excellence and honesty and in appreciation of such functions it has received assistance from the Central Government. The respondent no.2A provides boarding facilities to the students and that the students have applied online for participation in the WBJEEM Examination of 2016 and pursuant to such applications the institutes and centres have been allocated automatically without any intervention of the WBJEEB. The allegation of nexus of the respondent no.2A with WBJEEB is absolutely unfounded.

21. Mr. Sougata Bhattacharya, learned advocate appearing for Medical Council of India submits that the admissions pertaining to WBJEEB of 2016 is already completed. The refusal of interim order by this Court was not interfered with by the Hon'ble Supreme Court in the Special Leave Petition. The schedule for the examination, counselling and admission pertaining to the said examination process of 2016 is already over. The Hon'ble Supreme Court has mandated that

the time schedule fixed for such examination, counselling and admission shall be strictly adhere to and that the Court in exercise of the power of judicial review cannot be generous and liberal in issuing any direction towards relaxation of the time schedule inasmuch as the same would lead to violation of the statutory rules and regulations. In the instant case the candidates admitted through WBJEEB of 2016 have already pursued their respective courses for more than a period of a year and as such at this stage any interference would extremely prejudice the right of the said candidates to continue with their courses who are not even parties to these proceedings. In support of the arguments, reliance has placed reliance upon the judgments delivered in the cases of Mridul Dhar (Minor) and Anr. -vs- Union of India and Ors., reported in (2005) 2 SCC 65, Faiza Choudhary -vs- State of Jammu & Kashmir & Another, reported in AIR 2013 SC 1115 and Medical Council of India -vs- Madhu Singh & Ors., reported in AIR 2002 SC 3230.

22. Heard the learned advocates appearing for the respective parties and considered the materials on record.

23. The order dated 2nd September, 2016 refusing grant of an interim injunction was challenged before the Hon"ble Supreme Court by way of a Special Leave Petition but the same was dismissed with a request to the High Court to expedite the hearing and disposal of the writ application pending before it as far as possible within 6 weeks from the date the pleadings are complete. The process of counselling and admission was not interfered with at any stage and the students admitted had pursued their respective courses for about a year.

24. The allegations to the effect that candidates getting higher marks were put in lower ranks whereas candidates getting lesser marks were awarded higher rank and that the reservation policy was not followed and that specification of the cut-off marks was erroneous could not be substantiated by the petitioners. Acceptance of an OMR answer script by the machine, in which the candidate instead of bubbling a space encircled the same, cannot be cited as an instance of favouritism on the part of WBJEEB and it is also an impossibility to weed out the beneficiaries of one or other of the irregularities or illegalities.

25. The contention of the petitioners that all the candidates from the coaching centres run by the respondent no. 2A who appeared in six specific examination centres emerged to be successful is not acceptable to this Court inasmuch as out of the total number of candidates, 12000 candidates who scored 50% or more marks were granted a rank and out of the said 12000 candidates only 1301 students of the respondent no.2A got more than 50% marks and amongst the first 4000 candidates in the merit list there was only 683 candidates of the respondent no.2A. From the said facts and figures it is difficult to construe that there exists some sort of nexus among the respondent no.2A and WBJEEB. Merely on the basis of suspicion and without any appropriate evidence to show that there had been an attempt on the part of the respondents to conceal particulars and facts, it would not be proper for the writ Court to direct an

investigation into the affairs of the said respondent no.2A.

26. It is true that the examination, counselling and admission is over and the entire process is complete and any interference at this stage would extremely prejudice the students who have been admitted and have pursued their respective courses for more than a year. Furthermore, the refusal of an interim order by this Court to restrain the authorities from proceeding with counselling attained finality through dismissal of the Special Leave Petition. In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole, there is hardly any justification in law to cancel the examination by applying an unilaterally rigid standard. As such, we are of the opinion that the entire examination cannot be set aside at this stage and the prayer of the petitioners to that effect is rejected. In view of such decision, we do not find it necessary to discuss as regards application of the judgements relied upon by the respondents.

27. It has, however been admitted on behalf of WBJEEB that the number of the questions pertaining to the subject of Physics were not properly printed in the OMR answer sheets. Such error undoubtedly speaks of a lackadaisical attitude on the part of WBJEEB in conducting the examination process. After this Court wanted to know as to whether any steps have been taken by WBJEEB against the authority who was given the responsibility to print the OMR answer sheets, WBJEEB adopted a resolution on 3rd February, 2017 that 80% of the total bill towards printing of OMR sheets would be released to the concerned printing press but 20% would be kept on hold and apposite clarification would be sought for. WBJEEB has sought to defend itself by stating that there was a mandatory time schedule to complete the examination and as such there was no scope to defer the examination and that the inconvenience due to such erroneous printing has been suffered by all the candidates appearing in the said examination. Such defence is not acceptable to this Court. In this age of computerisation it is most unexpected that a statutory authority conducting an examination which would determine the fate of thousands of candidates all over the State to pursue professional courses, would not maintain and mandatorily follow a procedure to cross-check the OMR question and answer sheets after printing and prior to distribution of the OMR answer sheets to the examination centres. WBJEEB cannot be allowed to go scot-free for such negligence in conducting an examination upon which the fate of thousands of students was dependent.

28. It also stands admitted that upon considering the objections to the answer keys, an expert body found that the answer keys published were ambiguous and accordingly a decision was taken to drop eight questions in total (one question in Physics, two questions in Chemistry and five questions in Biology) and to grant one mark each in respect of all the eight questions to all the candidates.

29. In reply to the petitioners' objection that WBJEEB could not have dropped

eight questions, it has been contended that upon consideration of 876 objections a decision was taken to place the issue before the academic experts. Accordingly an expert body was constituted. The members of the said body was of the opinion that the model answer keys pertaining to the said questions were ambiguous and as such it was suggested to pass on the best benefit of doubt to the candidates by dropping all the said questions by allotting full marks pertaining to the said questions to all the candidates irrespective of the fact as to whether the question was attempted or not. Such opinion and suggestion of the expert body was accepted by WBJEEB and this Court cannot sit in appeal over such decision of an expert body.

30. It is no doubt true that the Court should always be slow to interfere with a decision of an expert body. The decision of the expert body was limited to the issue that the model answer keys pertaining to eight questions were ambiguous. Such decision, in our opinion, does not sanctify the ultimate decision of WBJEEB to drop the said questions and to grant one mark each to all candidates irrespective of the fact as to whether the candidates attempted the said questions. Such decision in fact curtails the arena of competition to a fewer questions and tantamounts to application of different yardsticks among the participating candidates. Had the answer keys been correct as disclosed in the website, the candidates who attempted the questions correctly would have been allotted full marks and the candidates who attempted the said questions wrongly would have suffered negative marking. The candidates who did not attempt the said questions at all would have been allotted no marks. Irrespective of the merit of the decision of the expert body it is explicit that due to the decision to drop the said questions and to allot one mark to all participating candidates, the candidates who did not attempt and were not entitled to any mark, got an additional mark and the candidates who attempted the questions and gave wrong answers and would have suffered negative marking got a bonus mark. The value of that one mark is extremely high inasmuch as a difference of one mark would have the effect of throwing away hundred candidates from the zone of consideration. WBJEEM accordingly cannot avoid the responsibility of having set ambiguous questions and of having adopted a decision to drop the eight questions and to allot one mark each in all the said questions to all the candidates who appeared in WBJEEM. Lakhs of students toiled for years together to participate in WBJEEM for fulfilment of their dreams to get admission in medical or engineering courses. They reposed total faith upon WBJEEB and participated in the examination but unfortunately WBJEEB was not sincere and it proceeded to conduct the examination in a casual manner and sought to plug the loopholes after the examination was over. It is necessary, for all the role players in the process, to secure and sustain the confidence of the public in general and the student fraternity in particular in the system by its unquestionable trustworthiness. Such a system is endorsed because of its credibility informed with guarantee of fairness, transparency authenticity and sanctity. There cannot be any compromise with these imperatives at any cost. We are, thus, thoroughly

dissatisfied with the manner in which the examination has been conducted by WBJEEB and it is legally responsible to pay costs. The sufferings of the candidates have assumed more gruesome dimension since a body upon whom they reposed total faith had failed to discharge its obligations responsibly and such conduct is not condonable. WBJEEB must pay for its inability to introspect and to take appropriate measures in setting the questions pertaining to the respective subjects and in ensuring proper printing of the OMR answer sheets.

31. Though we are of the view the petitioners in particular and the student community in general, whether one has approached the Court or not, should not suffer but the impact of erroneous printing of OMR answer sheets and the decision to drop eight questions and to allot one mark to all the participating candidates cannot be ascertained exactly at this stage when the examination and consequential admission of the students in the respective courses is already over. In view of such irretrievable circumstances, quantification and distribution of compensation has become an impossibility.

32. However, we impose upon WBJEEB costs amounting to Rs. 5 lakhs. The said amount shall be paid by WBJEEB to the Registrar, University of Calcutta within a period of four weeks from date. Upon receipt of the said amount the Registrar, University of Calcutta shall keep the same in a separate account to be utilised as a corpus for grant of scholarship to deserving candidates who are economically backward.

33. The WBJEEB would be at liberty to recover the said costs from its officers and employees upon conducting appropriate investigation and upon fixation of responsibility.

34. With the above observations and directions the writ petition and the connected applications are disposed of.

35. There shall, however, be no order as to costs.

36. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.