

(1993) 04 MAD CK 0007

In the Madras High Court

Case No : Writ Petition No. 3609 of 1993

S. Usha Rani

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 30-04-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 04 MAD CK 0007

Hon'ble Judges : Raju, J;Bakthavatsalam, J

Bench : Division Bench

Advocate : Govind Swaminathan, for N.S. Sivam, G. Anbumani and R. Ganesan, for the Appellant; K. Subramaniam, for P. Shanmugham, for Respondents 1 to 3 and M. Velusamy, for 4th Respondent, for the Respondent

Final Decision : Allowed

Judgement

Bakthavatsalam, J.—The prayer in the writ petition is to issue a writ of Mandamus under Article 226 of the Constitution of India directing

the Respondents to provide one seat to the Petitioner in the course M.D. (Obstetrics and Gynaecology for 1992-93 session in the Government

Medical Colleges of Tamilnadu duly evaluating the answer paper of the Petitioner in the Entrance Examination conducted by the Respondents for

the above course.

2. The Petitioner after passing M.B.B.S. was selected for the course or Diploma in Gynaecology and Obstertrics in 1990 and successfully passed

the Diplomacourse in 1991. In the affidavit it is stated that now the Petitioner is working as Assistant Surgeon. Government Primary Health Centre,

Nachallur, Trichy District. The Petitioner applied for the Post Graduate Degree Course for MD (Obstertrics and Gynaecology) for the year 1992

93 sessions. According to the prospectus, the maximum marks for the entrance examination would be 90 and for the service, 10 marks are

awarded. It seems that the entrance examination was conducted in September, 1992. The question paper in the entrance examination contained

120 questions, each carrying 0.75 marks, making the total of 90 marks. Each question carried four probable answers and the candidate has to

select the correct answer to the question. The answer sheet is like a tabular sheet having question numbers printed and the candidate has to write

the correct answer in the boxes below the questions. The Petitioner alleges that out of the 120 questions, she answered all the 120 questions. She

further alleges that after returning from the examination hall, she noted down all the questions asked and also the answer given by her for each

question. It is alleged that she was able to give correct answers for 112 out of 120 questions and the concerned text books support her answers.

The Petitioner alleges in the affidavit that for the 112 correct answers, she should have been given 84 marks out of 90 marks and if six marks are

given for her experience, she should have got 90 marks, and if so, this would have enabled her to be selected for the M.D. course (Obstertrics and

Gynaecology) for the year 1992-93. However, it is alleged that the Petitioner received a communication from the Director of Medical Education

during December 1992 that she had obtained only 76.5 marks in the Entrance Examination. If the marks allowed for service, that is six marks are

added, she would have obtained 82.5 marks out of 100 marks. Since the cut-off marks is 85 marks for the candidates selected under the category

of Backward Class, she has not been selected. The Petitioner alleged in the affidavit that the Respondents, to help their candidates fed wrong

answers for the correct answer for evaluation and by that, they made the correct answers given as wrong and reduced the marks for the

candidates who have prepared well. According to the Petitioner, this is a fraud played by the Respondents and adopting the above unfair means,

the Petitioner has been awarded 76.5 marks and has not been selected. With these allegations, the Petitioner has come to this Court to

demonstrate how the evaluation in the entrance examination has been done wrongly and she has got to be selected. The Petitioner refers to the

earlier proceedings before this Court in W.P. No. 14235 of 1990 wherein Sri Ramalingam, J. has gone through the materials and allowed the writ

petition. The Petitioner alleges that she is also similarly situated and as such, the Court would peruse the answer papers and render justice to her.

3. A counter affidavit has been filed on behalf of the Respondents. It is stated in the counter-affidavit that the Petitioner applied for Post Graduate

Medical Course in M.D. (Obstetrics and Gynaecology) for the Academic year 1992-93. It is also stated in the counter affidavit that the Petitioner

obtained 76.5 marks in the entrance examination and 6 marks have been awarded for her service, thus totalling 82.5 marks. However, it is stated

in the counter affidavit that the cut-off marks for the selecting of candidates who come from Backward Community into Post Graduate Medical

Course for the academic year 1992-93 is 85 marks and hence the Petitioner was not considered for selection. A reference to instruction 9(d) of

the Instructions given to the candidates is made in the counter-affidavit, which, in our view, is unnecessary for considering the facts of this case. It is

stated in the counter-affidavit that the manual verification of the Petitioner's answer sheet has been made with the key answer, which tallies with the

computer valuation and the marks awarded to the Petitioner is found to be correct. A reference to Serial No. 13 of the Instructions given to the

candidates, was also made in the counter-affidavit, wherein it is stated that computerised valuation is final and request for re-checking, revaluation

of answer sheets is not entertained." It is also stated in the counter-affidavit that the multiple choice questions were set with due care by

professionally competent persons and the panel of professors who contributed the questions and answers in various subjects and the professors

who verified the correctness of the answers to the questions are eminent scholars of experience and well-versed in their subject. It is also stated

that if this type of allegations are entertained by this Court, the same would open a flood gate of litigations which would cause irreparable loss to

the Respondents and also be waste of time of this Court.

4. After the writ petition was heard for some time on an earlier occasion an additional counter affidavit is filed by the Respondents and in the

additional counter-affidavit it is stated that since certain factual averments made in the affidavit of the Petitioner were omitted to be specifically

controverted, the additional counter-affidavit is filed. It is also stated that the Petitioner has to choose one answer as the most appropriate answer.

The relevant instructions for the purpose of this writ petition is extracted in the additional counter-affidavit and it is in the following terms:

7. Enter in the box provided below each question No. In the answer sheet, one of the 4 alternatives (1), (2), (3), (4), which you choose as the most appropriate answer

So it is stated that the candidates must choose the most appropriate answer. It is stated that there can be more than one answer that may be

correct but the candidates were instructed to give the most appropriate answers. It is stated that the Petitioner has given appropriate answers for

102 questions and she has given wrong answers for 18 questions. As the answers given for 102 questions were found most appropriate, 76.5

marks were awarded to the Petitioner and no mark was awarded for 18 questions as the answers were not found to be appropriate. The allegation

of the Petitioner that the system, which has been alleged by the Petitioner as fraud, is denied. It is also stated in the additional counter-affidavit that

there is no possibility of feeding wrong answers as correct or correct answers as wrong in the computer valuation and there is no possibility of

reducing the marks to the candidates, like that of the Petitioner. It is also stated that the Petitioner cannot contend that correct answers given by her

were shown as wrong in computer valuation. It is stated that no revaluation of answer sheets is entertained and the valuation made is final, and

assuming that there is any ambiguity in the questions or in the key answers, it is applied uniformly to all the candidates and the benefits of

disadvantages; if any, are applied uniformly. In conclusion, it is stated that the marks secured by the Petitioner, namely 76.5 marks represent the

correct valuation of the entrance examination.

5. The learned Special Government Pleader (Education) along with the additional counter-affidavit filed two annexures as Annexure I and

Annexure II with regard to the questions and answers and also the reference books from which the answer have been taken.

6. Mr. Govind Swaminathan, Senior Counsel also had prepared a tabular form and also a typed set which include the questions, probable

answers, the answers given by the Petitioner, in the answers which are said to be right by the Selection Committee and the reference books relied

on by the Petitioner.

7. Mr. Govind Swaminathan, learned Senior Counsel contends that what all required by a candidate to do in the entrance examination is to give the most appropriate answers and not the correct answers. Learned Senior Counsel says that most appropriate answer cannot be termed as correct

one. It is meaningless to say that correct answer is not given and as such the Petitioner is not awarded marks. According to the learned Senior

Counsel, the Petitioner has given the most appropriate answers for all the questions and has demonstrated before us with regard to 9 questions.

They are question Numbers 26, 29, 101, 115, 116, 117, 4, 99 and 2. Learned Senior Counsel referring to the tabular form given to us and

explained and taken us through the answers given by the Petitioner and also the answers said to be right by the Selection Committee. Learned

Senior Counsel also referred to the concerned reference books to demonstrate that the Petitioner has given the most appropriate answers for the

questions. According to the learned Senior Counsel, even if marks are awarded to 4 questions, then the Petitioner would come within the cut-off

marks of 85 so that the Petitioner will be entitled to a seat in the Post-Graduate Course for which she applied for.

8. The learned Special Government Pleader (Education) who appeared before us tried to argue on the basis of the counter-affidavit filed by the

Respondents. The learned Special Government Pleader contended that if this Court has to come to the conclusion that the answers given by the

Petitioner are correct answers, the entire selection made to the Post- Graduate course for 1992-93 will be questioned and as such, such course

should not be adopted by this Court. The learned Special Government Pleader further pointed out that the answers given by the Petitioner was

valued by computer and the valuation is final according to the Instructions given to the candidates and the marks given to the Petitioner cannot be

increased on any score. It is also contended by the learned Special Government Pleader that the academic year 1992-93 is already on and the

Petitioner has already lost term days. this Court has to take into consideration that fact also.

9. We have considered the arguments of the learned Senior Counsel Mr. Govind Swaminathan and the learned Special Government Pleader who

appeared for the Respondents. We have gone through the records produced before us, the annexures supplied by the learned Special Government

Pleader (Education). With regard to the questions and answers and also materials produced, the learned Senior Counsel demonstrated how the

Petitioner has given most appropriate answers though they may not be the Only one of correct answers. First of all, it is not the case of the

Petitioner asking for ordering re-valuation of the answers. On the other hand, it is the case of the Petitioner vindicating her claim or right before the

competent court that despite the fact of giving the most appropriate answers, she has not been given the due or legitimate marks entitled to. In such

a situation, a reference to instructions 13 and 14 in the Instructions given to the candidates, which are referred to in para 2 of the additional

counter- affidavit, is no effective answer for the arguments of the learned Senior Counsel. Further, the plea that even assuming that there is any

ambiguity in the questions or in the key answers, it is applied uniformly to all the candidates and accordingly the benefits or disadvantage if any are

applied uniformly is once again not a tenable contention to be raised before this Court. Apart from the fact that we have not concrete material to

show which is the correct answer, this Court is obliged to see whether answer given by the Petitioner is the most appropriate with reference to the

materials placed before us. We are satisfied even on a cursory perusal of the source material from the standing text books produced before us by

both the parties, that they disclose that the claim of the Petitioner is to be sustained in respect of the questions already noted above, that is,

question Nos. 2,4,26,29,99, 101, 115,116 and 117.

10. In the light of the facts of this case as stated above, the point is whether this Court can go into the question of revaluation. In Kanpur University

and Others Vs. Samir Gupta and Others, it has been held.

In case of doubt unquestionably the key answer has to be preferred. But if the matter is beyond the realm of doubt, it would be unfair to penalise

the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong.

The Supreme Court has also said:

It is true 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 or men, well-versed in the particular subject would regard as correct.

On the facts of the case, it is demonstrated by the learned Senior Counsel that the Petitioner has given the most appropriate answers and we have

already stated that the Respondents required only appropriate answers and not the only one of the correct answers and as such, if the petition is

awarded marks even for four questions, she will come within the cut off marks which is necessary for getting a seat in the Post Graduate Degree

Course for M.D. for the year 1992-93. As such, direction to issue to the Respondents to admit the petition in the Post Graduate Degree Course

for M.D. for 1992-93 on production of a copy of this order forthwith after receiving necessary fees etc.

10.-A. With regard to the contention of the Petitioner that she has lost term days and she has to be given attendance it is for the Petitioner to apply

to the University authorities and it is not for this Court to say or comment on that at this stage. However, the Petitioner may move the fourth

Respondent herein for necessary condonation and as and when an application for condonation is filed, we do hope that the University authorities

will take into consideration the extraordinary situation in which the Petitioner was placed and the belated admission of the Petitioner in the Post-

Graduate Course for the year 1992-93. The writ petition is allowed in the above terms.