

(2003) 03 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No"s. 37777, 37993, 38517, 38809, 38834 and 38835 of 2002

Sharin Dhiman

APPELLANT

Vs

The Common Entrance Test Cell and Others

RESPONDENT

Date of Decision : 11-03-2003

Acts Referred:

Karnataka (Selection of Candidates for Admission to Engineering, Medical and Dental Courses) Rules, 1999 — Rule 11

Citation : (2004) 3 KarLJ 271 : (2003) 3 KCCR 153 SN

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : R. Veerendra Sharma, in W.P. Nos. 37777, 38517, 38809, 38834 and 38835 of 2002 and Ashok Haranahalli, in W.P. No. 37993 of 2002, for the Appellant; A.N. Venugopala Gowda, for caveator-Respondent-1 in W.P. Nos. 37777 and 38809 of 2002 and for Respondent-1 in W.P. Nos. 37993, 38517, 38834 and 38835 of 2002 and Shashikiran Shetty, for Respondent-3 in W.P. Nos. 37777 and 38517 of 2002, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The petitioners herein are all students who appeared for CET-2002 examination conducted by the 1st respondent herein viz., the Common Entrance Test Cell on 9-5-2002 and 10-5-2002 which is a qualifying examination for seeking admission to a professional course in the State of Karnataka. All these petitioners are non-Karnataka students who had their 10+2 examination outside the State of Karnataka. The petitioners were informed by the 1st respondent that they have secured ranks as 134, 235, 219, 250, 227 and 240 respectively in the Medical Merit Order of the CET. They were called over for counselling and were allotted seats in the respective colleges, according to the merit. On the basis of the admission orders issued by the 1st respondent, the petitioners got themselves admitted in the respective colleges. Thereafter, they paid the necessary fee to the respective colleges and started attending the classes. But to

their utter shock and surprise, on 30-9-2002, when the orientation function was being held in the colleges, it was announced that the seats allotted to the petitioners have been kept in abeyance and they were called upon to contact the college authorities in that regard who in turn directed them to contact the 1st respondent. It is relevant to point out that the admissions of 26 out of 243 non-Karnataka candidates who are selected, were kept in abeyance and they were served with show-cause notices calling upon them to show-cause as to why the admission orders issued to them should not be cancelled. All these petitioners submitted their reply to the show-cause notices, They contended that the entire action taken by the 1st respondent in keeping their admissions in abeyance and issuing show-cause notices are illegal, void and without any jurisdiction. Therefore, they have preferred these writ petitions for quashing of the show-cause notices and for permission to complete their studies in the same colleges.

2. These writ petitions came to be filed on 3-10-2002. After the filing of the writ petitions, the enquiry proceedings initiated by the 1st respondent continued. The petitioners participated in the said enquiry and thereafter the Special Officer who was holding the enquiry passed orders holding that the ranks were assigned to the petitioners on the basis of tampered computer data. Accordingly, the rankings allotted to the petitioners were cancelled, The medical seats allotted to the petitioners were also cancelled and the colleges were directed to fill up those seats as per the fresh allotment made by the 1st respondent. The petitioners in these writ petitions contend that the Common Entrance Test conducted by the 1st respondent is fool proof, tamper proof and cannot be manipulated by any person at any stage. The procedure followed for the conduct of the examination and the subsequent valuation of the answer scripts are all done as per a unique method evolved by the 1st respondent. The same is brought out in detail in the Brochure issued along with the application form for the Common Entrance Test. Therefore, they contend that the allegations of tampering with the computer data, manipulation and fraud are without any basis and consequently, the holding of enquiry and passing of orders cancelling the merit list are all illegal and are liable to be set aside.

3. Respondents have filed a detailed statement of objections stating that on 20-9-2002, after completion of the seat selection process and after allotment of seats, a letter was received suspecting the performance of a non-Karnataka CET 2002 candidate by name Ms. Monica Thocham. The same was referred to the Administrative Officer of the CET Cell for verification and report. Permission was sought to open the strong room to check the OMR answer sheets of the said suspected candidate and to know the veracity of the contents of the letter. On verification, the Administrative Officer reported that the marks allotted to the candidate as found in the computer data was very high and contrary to the marks obtained by her, while the answer script was valued manually. As the results were startling, entertaining bona fide doubts of irregularities, if any, in the allotment of Non- Karnataka quota medical seats, Administrative Officer was directed to verify answer sheets of the 243 non-Karnataka quota medical

allotments. The Administrative Officer, with the assistance of the personnel of NIC and other CET staff carried out the verification and reported that in respect of 26 candidates, there was vast difference in the marks obtained by manual evaluation when compared to the data fed to the computer. These petitioners are among those 26 candidates. It is thereafter that show-cause notices were issued to the 26 candidates on 28-9-2002. In response to the show-cause notices, 16 candidates out of 26 appeared and submitted requisitions surrendering their non-Karnataka medical seats, whereas the petitioners have chosen to challenge the said show-cause notices in these writ petitions. The petitioners submitted the reply and thereafter, appeared for the inquiry. The documents relating to the petitioners of CET-2002 were produced and marked as exhibits. Petitioners inspected the said documents. They were given full opportunity to cross-examine the witnesses examined on behalf of 1st respondent. Thereafter, the impugned orders came to be passed which are based on their actual performance as reflected in the OMR answer sheets of CET-2002. It is contended that the medical merit order/ranks have been assigned to these petitioners on the basis of tampered computer data and not based on their actual performance as reflected in the OMR answer sheets of CET-2002. Based on the said illegal rank, the petitioners had appeared for the seat selection process and got selected. The said ranks had been assigned because of fraud and other irregularities committed by some of the personnel working in computer section of CET Cell. If their actual performance in the examination is taken into consideration, they would not have been selected at all and even they had no chance of appearing for seat selection process. It is also stated that the petitioners did not produce the replica of CET-2002 OMR answer sheets, which was in their custody, for the reasons best known to them. The OMR answer sheets contained the signature of the candidate and the invigilator. The same were in the safe custody in the strong room of the CET Cell, which have not been tampered have remained as undisputed documents in the inquiry. It is further stated that Rule 11 of the Karnataka (Selection of Candidates for Admission to Engineering, Medical and Dental Courses) Rules, 1999 confers ample power on the examination conducting authority to hold inquiries and cancel the admissions if it is found that they have been secured by practising fraud, manipulation or any other questionable means. It is only on the basis of the material brought on record by way of evidence in the inquiry, the inquiry officer on proper appreciation of the same, has come to the conclusion that the manipulation of computer data has been established and accordingly, the impugned orders came to be passed. Therefore, it was contended that there is no illegality committed by the 1st respondent either in passing the impugned orders and in cancelling the admissions of the petitioners.

4. The learned Counsel for the petitioners contends as follows.--

"2(i) The 1st respondent is not competent to cancel the seat in the absence of there being an enabling provision under the CET Rules, Apart from Rule 19 of the CET Rules, there is no provision for cancellation of seats and Rule 19 has no application to the facts of the present case.

(ii) The petitioners have not in any way contributed for the error/mistake committed by the 1st respondent and its officers. The students got themselves admitted on the basis of admission order given by respondent and they have not made any false declaration before the 1st respondent.

(iii) The Hon''ble Supreme Court has held in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, that the directions given pursuant to Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., case stand overruled.

In view of this, the CET Rules, which has been formulated pursuant to the scheme formulated by the Unnikrishnan's case cannot also stand.

(iv) The order of cancellation has been made by the Special Officer of CET Cell even though the said Special Officer and its officers are responsible for the mistake. That being so, the Special Officer who himself is responsible for the act, has conducted the inquiry thereby holding his action to be incorrect. Such an action is clearly impermissible in the law.

(v) The students have got themselves admitted to the college and the college has not cancelled the admission. The Hon''ble Supreme Court has held that it is open for the college to make admission. That being so, the 1st respondent-Cell is not competent to cancel such admission.

(vi) The Special Officer has contended that some of the CET officials are responsible for the mistake in issuing admission order. Till date, no action is taken against these persons. An inquiry has been initiated by the NIC and the inquiry report is still not available. This is a clear case where the innocent students are being punished for the mistake committed by the CET Officials. The Hon''ble Supreme Court has held in the case of Anil Baipadithaya and others Vs. State of Karnataka and others, that the students shall not be punished at the behest of the one who is not prepared to punish the main culprit".

5. Repelling the said contentions, the learned Counsel appearing for the 1st respondent-CET Cell submitted that Rule 11 of the Rules confers power on the 1st respondent to cancel the admission. Even otherwise, it is settled law that power to grant admission implies in itself the power to cancel the same. Secondly, he submitted that whether the petitioners have actually participated in the manipulation or not, when once it is established that the said benefit accrued to the petitioners on account of any fraud played, such benefit accrued can be cancelled. Though the Supreme Court in the case of T.M.A. Pai Foundation, supra, has overruled the judgment in Unnikrishnan's case, supra, that does not mean that the CET Rules framed also stands cancelled, as contended by the learned Counsels for the petitioners. Though the Special Officer of the CET is the ultimate authority to conduct these examinations and merely because the ultimate responsibility lies with him, it cannot be said that he had no power to take action against subordinates who have indulged in malpractice, As the admissions were made by the CET Cell and only respective colleges permitted the students to.

attend the classes, the 1st respondent had the power to cancel such admissions. In fact, after cancelling the admissions, the CET Cell issued admission orders to other candidates who have joined the colleges and are attending the classes and under these circumstances, permitting the petitioners to continue their studies in the said colleges would not arise. Though, on the date of filing of the writ petitions, no action had been taken against the officials who indulged in malpractice, a police complaint is lodged on 27-2-2003 and a case has been registered in Crime No. 3 of 2003 in Cyber Crime Police Station, Bangalore and therefore the contention that as no action is taken against the officials responsible for manipulation, innocent students cannot be punished, has no substance.

6. In view of the aforesaid facts and rival contentions, the points that arise for consideration in these writ petitions are as under.--

(1) Whether the 1st respondent has the jurisdiction and authority to hold an enquiry and cancel the admissions made under the rules in the absence of a specific provision empowering him to cancel the admissions.

(2) In the absence of any evidence showing the role played by the students in the manipulation of the results in the computer, can the students be punished on the ground that they are the beneficiaries of the fraud.

(3) In view of the judgment of the Supreme Court in the case of T.M.A. Pai Foundation, supra, whether the rules framed for admission to professional colleges in Karnataka based on Unnikrishnan's case, supra, stands overruled. Consequently, whether the colleges who have admitted the petitioners could continue to entertain the students.

7. Before I proceed to answer the aforesaid points, it is necessary to know the technical procedures and aspects of evaluation, rank generation and allotments of seats. It is as under.--

"After the examination (Common Entrance Test) is over, the original OMR sheets of all the candidates are scanned in CET Office in the presence of Engineer from the scanner provider. Before scanning is started, sample checks are made before loading to the database which contains subjectwise tables, that is for four subjects, namely Physics, Chemistry, Mathematics and Biology. Once satisfied with the accuracy of the data from the scanner through the operation mentioned above, answer sheets are scanned centre code wise and loaded to the four subject tables mentioned above. Later on checklist for name, CET No., version code etc., having discrepancies are generated and corrected without touching the answer part of the OMR answer sheet. Later key answer will be given by the Special Officer which is again fed to the computer system through scanner, Checklist is generated and thoroughly checked with the key answer. Afterwards evaluation programmes are run which compares the key answer with the answers of the candidates record by record for all the four subjects. Evaluated results are posted to four more tables of the data base subjectwise for the above

four subjects. After this process, candidate table which is a consolidated table of candidate data, CET marks for all the students and qualifying examination marks for Karnataka candidates is prepared. On this table check for eligibility conditions, compute the percentage for ranking is done. After this, ranks are generated separately for Karnataka Medical, Non-Karnataka Medical, Karnataka Engineering and Non-Karnataka Engineering. Withheld list will also be generated and all the lists are printed. All these processes are through computers and pre-programmed. Except checklist correction, no manual work is involved".

The names of the students and the actual marks obtained by them in three subjects, the percentage of marks, actual medical rank on the basis of the actual marks as opposed to the marks obtained by manipulation in the computer programme, the percentage of marks, computer medical rank and difference of percentages are clearly set-out as per the following statement:

Statement showing the details of percentage of marks pertaining to 9 non-Karnataka candidates

Sl. No.

CET No.

Name of the candidate

CET Actual marks

Actual PCB%

Actual Medical Rank

Marks in Computer

Computer PCB%

Computer Medical Rank

Deference of % in PCB

Phy.

Che.

Bio.

Phy.

Che.

Bio.

1.

DE344

Mr. Sankalp Jain

11.75

34.73

3675

46.25

6746-G-55

29.75

485

55.25

74167

156

27.917

2.

GF225

Mr. Sharin Dhiman

14

31.25

345

44.305

7698-G-55

30.75

4575

57.5

74444

134

30.139

3.

CT954

Mr. Rahul Gupta

1125

2075

26

31222

15043-G-55

35.75

525

45

74028

167

41.806

4.

GJ311

Mr. Aditya Shahadi

125

30.5

36.25

44027

7814-G-55

27

4875

55

72639

219

28.342

5.

CH382

Mr. Ravinder Kumar Puri

0

154

10

13.611

28976-G-55

27.25

50.5

54

73.194

192

59583

6.

DM849

Mr. Mohit Kapur

11.5

15

35.75

34.583

13367-G-55

23.75

48.75

58

72.5

227

37.917

7.

DJ317

Mr. Anurag Rudra

6.5

18.75

16.25

23.055

22272-G-55

32-25

47.75
505
72.5
235
49.445
8.
AM356
Ms. Monica
075
13.75
11
14.166
28668-G-55
36
445
50
72.5
240
58.334
9.
ES461
Singh
5.5
195
2425
27.361
18707-G-55
23.75
525
53.75

72222

250

44.861

It is in this background the rival contentions are to be considered.

8. Regarding Point No. (1).--The admissions of the petitioners to the professional colleges is made under the provisions of the Karnataka Selection of Candidates for Admission to the Engineering/Medical and Dental Courses Rules, 1997, hereinafter referred to as the "rules". The said rules deal with conduct of selection/Entrance Test. The entrance test is conducted by a Committee called "Entrance Test Committee" set up by the Government in which the Special Officer of Common Entrance Test Cell is a Member. The said Committee has been empowered with the power to take decisions from time to time in respect of matters which are said to be covered by Sub-rule (2) of Rule 11. Sub-rule (3) of Rule 11 provides that the Chairman of the Committee shall preside over the meetings of the Committee and Sub-rule (4) of Rule 11 provides that the Member-Secretary shall take directions from the Chairman and the Government in discharging his duties in connection with the Entrance Test. He shall be responsible for arranging the matters stipulated under the said sub-rule. One such responsibility is arranging for computerisation of various matters in connection with the Entrance Test. Sub-rule (3) of Rule 12 categorically provides that appearance at the Entrance Test does not entitle a candidate to be considered for admission automatically unless the candidate satisfies all the conditions of admission requirement stipulated under the rules and Clause (vi) of Sub-rule (4) of Rule 12 mandates that the Director shall prepare a list of all eligible candidates in the order of merit as specified in the provisions of Rule 6 which shall be the basis for allotment of free and payment seats. Rule 19 of the said rules provides for penalties which reads as under.--

"Rule 19. Penalties.--(i) Where a candidate or his parents or guardian furnishes false or incorrect marks card or statement of marks or a certificate or an affidavit filed along with the application such application shall be liable to be rejected and the seat, if any, given to such candidate shall be liable to be forfeited. Such candidate his/her parents or guardian as the case may be shall also render themselves liable for both civil and criminal action.

(ii) Where the Special Officer considers that action should be taken under these rules for rejecting an application and forfeiting a seat he/she shall pass appropriate orders after holding such enquiry as he deems necessary and after giving reasonable opportunity to the candidate and/or his parents or guardian concerned to make his representation".

9. Learned Counsels for the petitioners, relying on Rule 19, contends only when a candidate or his parents or guardian furnishes false or incorrect marks card or statement of marks or a certificate or an affidavit filed along with the application,

such application shall be liable to be rejected and seat, if any, given to the candidate shall be liable to be forfeited. In no other case, the Special Officer is empowered to cancel the admissions given once.

10. Per contra, learned Counsel for the Common Entrance Test Cell submits that Rule 11 of the Rules which provides for allotment of seats provides that if such a seat allotted on the basis of any misrepresentation, fraud or any other varying circumstances, the authority empowered to allot the seat has the authority to cancel the seat and therefore, it cannot be said that the order passed by the Special Officer cancelling the allotment of seats in favour of the petitioners is one without jurisdiction. In fact, this Court had an occasion to consider the power of the Special Officer under Rule 11 in the case of Kum. Babitha Nugala Vs. Common Entrance Test Cell, Govt. of Karnataka and Another, . In the aforesaid judgment, while interpreting Rule 11 and in particular Sub-rule (4), it was held as under.--

"A reading of Sub-clauses (a) to (h) of Rule 11(4) would show that the conduct of the examination and matters relating thereto have been entrusted to the Special Officer. The nature of the duties broadly described under Sub-rule (4) of Rule 11 should, in my opinion, include any proceedings that may become necessary on account of the use of unfair means of mass copying by the candidates appearing in any centre. That is especially when there is no other authority designated by the rules for holding any such enquiries and passing orders".

11. In somewhat identical situation, the Division Bench of the Andhra Pradesh High Court in the case of P. Subbarao and Others Vs. Andhra Pradesh Public Service Commission, Hyderabad, has held as under.--

"Though Article 320 speaks only of the conduct of examinations and does not specifically confer any power on the Public Service Commission to hold enquiries into the malpractices or misconduct of the examinees or to punish such delinquents, yet such power is impliedly granted by the very enactment. Unless such ancillary or incidental powers are implied, it is difficult for a statutory body to give effect to the purpose for which the enactment was made. It is the primary duty of the body that conducts the examinations to maintain the purity and strict standards of the examinations. It is also expected to device every method to put an end to malpractices and to prevent one or other of the examinees obtaining an unfair advantage by resorting to malpractices. Further, the very concept of publication of result involves the investigation into misconduct concerning examinations. Publication of results involves the thought that it should be a correct publication and excludes the possibility of results obtained by fraud being given effect to. Hence, Rules 14 and 15 which have been framed have been conceived in the interests of the integrity of standards of the examinations.

The above principle applies not only to powers conferred but also with full vigour

to duties. It is as important to discharge duties effectively as to exercise the powers. Such powers or duties are inherent in the statute if they are essential to carry into effect the object of the Act. Otherwise, the purpose of the statute will be defeated.

Where one of the examinees is supplied with the rules relating to the examination and agreeing to those conditions contained in the rules he appears for the examination, it is not open to him to question the legality of the conditions under which such examination is held".

12. Therefore, it follows that the Common Entrance Test Cell, represented by its Secretary, is an authority constituted under the rules to allot seats on merit basis to the candidates for being admitted to professional colleges. In fact, the admission order is issued by the Common Entrance Test Cell. It is after obtaining the admission order, the students join respective colleges and they start attending classes. Strictly speaking, there is no admission of the students by the colleges as the entire admission process is regulated under the rules. When once such admission is obtained by practising fraud or is granted under a mistake such admission can be withdrawn as the power to admit includes the power to withdraw the admission. The only condition to be specified is that it should be shown that such admission is obtained either under fraud or misrepresentation. If there is a specific provision empowering the Special Officer to cancel the admission, then absolutely there would have been no difficulty, Rule 19 on which the reliance is placed categorically states that the Special Officer has the power to reject the application or forfeit the seat allotted in favour of a student if the said admission is obtained on the basis of false or incorrect marks card. In the absence of any specific provision made for cancelling admissions made on the ground of fraud or misrepresentation, the power to admit includes the power to withdraw the admission or cancel the admission. Such a power, in the absence of any prohibition, is impliedly granted by the very enactment. Unless such ancillary or incidental powers are implied, it is difficult for a statutory body to give effect to the purpose for which the enactment was made. It is the primary duty of the body that conducts the examinations to maintain the purity and strict standards of the examinations. The very concept of publication of result involves the investigation into misconduct concerning examinations. Publication of results involves the thought that it should be a correct publication and excludes the possibility of results obtained by fraud being given effect to. Such powers or duties are inherent in the statute if they are essential to carry into effect the object of the Act. Otherwise the purpose of the Statute will be defeated.

13. Under these circumstances, when on enquiry it was found that the petitioners have secured admissions on the basis of marks obtained by manipulation and on manual examination it was found that the petitioners have not secured the requisite marks for being considered for admission, the authority vested with the power to admit, has exercised the power to cancel those admissions obtained by fraud and it cannot be said the order passed by the

authority is one without jurisdiction.

14. Similarly, the contention that the manipulation alleged is against the officials of the Common Entrance Test Cell of which the Special Officer is the Head and therefore, he is incompetent to hold any such enquiry as he is also guilty of such manipulation is concerned, the said argument is without any basis. The Special Officer is the Member-Secretary of the Entrance Test Committee constituted for conducting the examinations. No doubt, the entire examination process including computerisation have been conducted under his supervision. But, merely because he is the head of the entire set up, if any of his subordinates, indulge in malpractice, commits fraud, the same cannot be attributed to him. When such a fraud or malpractice is brought to his notice, the Special Officer has taken action, initiated enquiry, made verification and after being satisfied that there is truth in the allegations made, has taken prompt action as expected of him, firstly, to cancel the admissions made on the basis of that manipulated result and ordered for enquiry on his subordinates who were responsible for the same. In that view of the matter, the contention that he is not competent to hold any enquiry or pass appropriate orders as he heads the entire organisation is without any substance.

15. Regarding Point No. (2).--Nextly it was contended that the material on record demonstrates that the petitioners have no role to play in the alleged manipulations in the computer operations. It is nobody's case that the petitioners had any direct access to the computers and they have physically operated the computers so as to generate these wrong results. The material on record discloses that only a handful of technicians who are experienced in the field were in charge of these computers and tabulation of results and it is they who have committed breach of faith reposed in them and manipulated these results by computer operations. After the said manipulations were detected, it was found that out of 243 students who were given admissions on the basis of these results, the marks obtained by 26 students were the results of manipulation. When a show-cause notice was issued to all the 26 students, 16 out of 26 students promptly appeared before the Special Officer and submitted requisitions surrendering their non-Karnataka medical seats and took back their original documents without any protest. It only demonstrates that the students who are the beneficiaries of these manipulations had clear knowledge about these manipulations. Once this fraud was detected, they became alert, became aware that it may result in criminal prosecution against them, Thereafter, they have surrendered their marks card and admission orders as they were fully aware that once the fraud is exposed, their career would be spoiled. To that extent, they have been fair enough to surrender the admission order and they took back their original documents and walked out of the entire process. It is only these petitioners who are still hoping to stick on to their manipulated results are knocking at the door of this Court for exercising humanitarian sympathy to save their admissions. If really the petitioners were innocent and they had no role to play in these manipulations, they should have come forward to

demonstrate their bona fides by responding to the directions issued by the Court in the course of the proceedings. When the Court had directed them to produce the replica of the OMR sheets retained by them, none of them were prepared to produce the same before the Court. On the contrary, it was contended on their behalf that all the nine students have destroyed the same. Accepting that explanation, to get the truth the Court directed the Common Entrance Test Cell to produce the OMR sheets maintained by the Cell and accordingly, the same was produced before the Court. These petitioners were called upon to state on oath,

(1) Whether the said OMR answer sheets belong to them?

(2) Whether it bears their signature?

(3) Whether they are their answer scripts?

The conduct of the petitioners in this regard exposes them completely. They were not prepared to accept or admit the signature found on the OMR Marks Sheet. On the contrary, affidavits were filed without complying with the aforesaid directions of this Court. When the Court passed the order that unless those directions are complied with the matters will not be taken up for consideration on merits, they challenged the said order before the Division Bench contending that even though they have complied with the directions of the Court, this Court had ignored and passed an erroneous order. They misled the Division Bench to believe that the directions issued by the Court have been complied with and in that regard an order came to be passed by the Division Bench holding that the learned Single Judge has not properly seen the affidavits filed by them and therefore, the matter was remanded back for fresh consideration in the light of the said statements made by them. After the matters were relisted before this Court, when the Court called upon them to point out whether they have complied with those directions, they had no answer. In fact, it was open to the petitioners either to comply with the said directions or to be fair enough to say that they have no intention to comply with the said directions. In response to the same, they have filed affidavits stating that they do not deny the fact that the OMR sheets produced by the Common Entrance Test Cell is not theirs, but they have not said in their affidavits that they would not deny the signature found on OMR Sheets. From this conduct it becomes clear that the OMR sheets produced by the Common Entrance Test Cell is the answer sheets belonging to the petitioners which bears their signatures. The petitioners have also not denied the marks evaluated after manual evaluation which clearly demonstrates that the marks obtained by these petitioners by virtue of computer tabulation is totally different from the marks which they have actually scored.

16. Under these circumstances, the only inference that is to be drawn is that even though no material is placed on record to show the direct involvement of the petitioners in manipulation of these results, but the fact remains that they are the beneficiaries of fraud and I have no hesitation in holding that the manipulations are necessarily done at their instance or at the instance of their

parents or guardian for consideration which are extraneous. In fact, dealing with a situation similar to the one, this Court in the case of Harish v. University of Agricultural Sciences ILR 1986 Kar. 499 has held as under.--

"(i) When the marks as entered in the Register maintained by the Pre-University Board tally with the marks report of the Principals of respective Colleges and do not tally with the marks cards produced the petitioners, it is obvious that the marks card produced by the petitioners do not reflect the true position as regards the marks secured by them at the qualifying examination. It must necessarily be a fake marks card. It is true that there is no direct evidence as to the actual perpetration of the fraud by the petitioners, However, the fact remains that they are the beneficiaries of fraud, by whomsoever it might have been committed. From the facts, it is clear that the petitioners produced a marks card as the genuine marks card which in fact is not genuine and the petitioners did not have any reason to believe it to be genuine. The said marks cards were produced in order to gain admission to a professional course. The University having believed the marks cards to be true and genuine admitted the petitioners. In these circumstances, it is not necessary that action should be taken only against the persons who are parties to the fraud, even the beneficiaries of such fraud are also liable for appropriate action".

In the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, it was held as under.--

"From this legal setting we have to consider whether the inference deduced by the Education Standing Committee that the fabrication of moderators" mark sheets was done at the behest of either the examinee or the parent or guardian is based on the evidence on record. It is already found that the examinees admitted the forgery of their concerned moderators" mark sheets resulting in the increase of marks to their advantage. The fabrication of the moderators" mark sheets was done after the scrutiny by the concerned officials in the office of the State Board at Bombay and before the moderators" mark sheets were taken out to Pune to feed the computer. Why one is expected or interested to wade through eighty thousand moderators" mark sheets to locate only the 283 examinees" mark sheets and add marks by fabrication? Unless either the examinee or parent or guardian approached the fabricator; gave the number and instructed him/ them to fabricate the marks, it would not be possible to know their number to fabricate. The act of fabrication is an offence. Merely that it was done in one subject or more than one makes little difference. Its gravity is not mitigated if it is committed in one subject alone. This is not an innocent act or a casual mistake during the course of performance of the official duty as is sought to be made out: It was obviously done as a concerned action. In view of the admitted facts and above circumstances the necessary conclusion that could unerringly be drawn would be that either the examinee or the parent or guardian obviously was a privy to the fabrication and that the forgery was committed at his or her or parent"s or guardian"s behest. It is, therefore, clear that the conclusion reached

by the Education Standing Committee that the fabrication was done at the instance of either the examinees or their parents or guardians is amply borne out from the record. The High Court in our view overstepped its supervisory jurisdiction and trenched into the arena of appreciation of evidence to arrive at its own conclusions on the specious plea of satisfying "conscience of the Court".

17. The material on record discloses that verification was made in respect of all the 243 non-Karnataka quota medical allotments. On such verification it was found that in case of 26 candidates there was vast difference in the marks. When show-cause notice was issued to these 26 students, 16 out of them did not contest, surrendered their seats. It clearly demonstrates they were aware of the truth. The petitioners, did not produce their OMR sheets, did not deny the OMR sheets produced by the CET Cell, and did not dispute the marks on the basis of manual evaluation, but are pleading that they are not party to manipulation and fraud. The material on record does not disclose that the said manipulation was an innocent act or a casual mistake during the course of the operation of the computer by the concerned officials, Why any mistake is committed in respect of 26 out of 243 candidates is not forthcoming. Unless either the examinee or parent or guardian approached the technician/operators of the computer, gave their number and instructed him/them to manipulate the marks, it would not be possible to know their number to manipulate. It was obviously done as a concerted action. In view of the admitted facts, and above circumstances the necessary conclusion that could unerringly be drawn would be that either the examinee or the parent or guardian obviously was a privy to the manipulation and fraud.

18. Therefore, it is clear that once the petitioners are shown to be the beneficiaries of these manipulation of results in the operation of the computers by the concerned technicians, even in the absence of any direct involvement of the petitioners in the same, the admissions obtained by the petitioners are liable to be cancelled and the Special Officer was fully justified in cancelling such admissions.

19. Regarding Point No. (3).--Insofar as the contention that the Eleven Member Bench of the Supreme Court in the case of T.M.A. Pai Foundation, supra, has overturned the decision in Unnikrishnan's case, supra, which was the basis for framing these rules is concerned, I do not see any substance in the same. In the first place, private colleges have not given admission to the petitioners. The admissions are given by the Common Entrance Test Cell and only those Colleges permitted the students to pursue their studies in the respective Colleges. When once the Common Entrance Test Cell which has given admissions cancels the said admissions and allots in place of those admissions other students who are found eligible for admission, the question of colleges continuing the students in their respective colleges would not arise. Even otherwise the law declared by the Supreme Court, after the Eleven Member Bench's judgment, is that it is merit alone and not the money which is the consideration for admission to professional

colleges, whether, it is a private institution or an aided institution or a Government institution. Merit is the sole criterion for admission to professional colleges.

20. In view of the facts of this case, the petitioners do not possess the requisite merit to come within the zone of consideration. When the petitioners do not possess merit, the question of those private colleges continuing these petitioners in the respective colleges would not arise. Even though some aspects in Unnikrishnan's case, supra, have been held to be invalid by the aforesaid judgment of the Supreme Court, in view of the law declared that merit is the sole criterion for admission to the professional colleges, the petitioners absolutely have no chance of getting admission to professional colleges as they do not have merit for admission to the respective colleges.

21. "Fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*) is a pristine maxim which has never lost its temper over all these centuries. Fraud affects the solemnity, regularity and orderliness of any examination conducted or evaluation of marks in the said examination, which is the basis for seeking an admission into a professional course. When once fraud is established, proved or admitted the question of the Courts taking a human or sympathetic consideration and allowing the student to retain the benefit of fraud and continue his education would not arise. The students who are prepared to start their academic career by indulging trickery and deceitful means, can expect no sympathy from this Court. Such students would destroy the fabric of the society and it is desirable that such students be weeded out from the education field, at the earliest, so as to create confidence in the genuine students that the education imparted in this country is to bring out honest citizens. Unduly lenient view of the Courts on the basis of human consideration in regard to such excesses on the part of the authorities has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in Courts of law. Courts do and should take human and sympathetic view of the matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardize the purity of selection process itself, engender cynical disrespect towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the Court. Such instances reduce the jurisdiction and discretion of Court into private benevolence. This tendency should be stopped. Where fraud is established, the Courts have no jurisdiction to condone the said fraud on any pretext whatsoever and grant relief to the litigant who has approached the Courts. The fraud disentitles the person approaching the Courts from any relief

22. In view of the discussions set out above, it is clear that the petitioners who have secured admission to the professional colleges by unfair means should not be continued in the respective colleges. If the authority had not taken prompt

action on the complaint received and unraveled the fraud played, 26 meritorious students would have been deprived of the professional seats for the current academic year and 26 undeserving candidates would have found a place in the professional colleges. Grave injustice would have been done to those students who burnt their midnight oil and who were denied admission earlier because of petitioners.

23. In these circumstances, it is an unfortunate state of affairs that some of the officials of office attached to the Common Entrance Test Cell had indulged in fraud. It is for the timely action taken by the Special Officer that a cyber crime had been detected in time and the damage done was corrected. In these circumstances, I do not find any illegality in any of the actions taken by the Special Officer of the Common Entrance Test Cell.

24. At the same time, having regard to the conduct of the petitioners throughout the proceedings as compared to other 16 students who surrendered their admission orders and marks cards and taken back their documents, the petitioners have to be made to pay costs for these legal proceedings. Hence, I pass the following.--

ORDER

The writ petitions are dismissed. Rule discharged. The petitioners are directed to pay a cost of Rs. 1,000/- each to the respondents.