

(2005) 01 KAR CK 0068

In the Karnataka High Court

Case No : Writ Petition No's. 23248 to 23250, 23265 to 23270, 23521 to 23554, 23312 to 23314, 23397 to 23399, 25209 to 25220, 24326, 24377, 24471, 24979, 26696, 28110, 30344 and 32167 of 2004

Sunil Kumar Thakur and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-01-2005

Acts Referred:

Karnataka Selection of candidates for Admission to Engineering, Medical, Dental and Indian System of Medicine and Homeopathy Courses Rules, 2003 — Rule 19, 19 (2), 19 (3)

Citation : (2005) 2 KarLJ 306

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Holla and Holla, Patil and Nettar, in W.P. Nos. 23521 to 23554, 24979, 25209 to 25220 and 30344 of 2004, N.K. Ramesh, in W.P. Nos. 23248 to 23250 and 23265 to 23270 of 2004, Jagadeesh Mundaragi and Associates in W.P. Nos. 23397 to 23399 of 2004, C. Dinakar, in W.P. Nos. 23312 to 23314 of 2004, Ramesh Rao and Associates in W.P. No. 26696 of 2004, Ashok B. Hinchigeri, in W.P. No. 24326 of 2004, M. Kumar, in W.P. No. 28110 of 2004, Ashok Harnahalli, in W.P. No. 24377 of 2004, Ajoy Kumar Patil, in W.P. No. 24471 of 2004 and C.M. Nagabushan and Chandrasekhara, in W.P. No. 32167 of 2004, for the Appellant; N.K. Ramesh, for Respondent-1 in W.P. Nos. 25209 to 25220 of 2004, for Respondent-2 in W.P. No. 28110 of 2004, for Respondent-4 in W.P. Nos. 23521 to 23554 and 30344 of 2004 and for Respondent-5 in W.P. No. 24471 of 2004, B. Manohar, High Court Government Advocate for Respondent-1 in W.P. Nos. 23521 to 23554, 23248 to 23250, 23265 to 23270, 26696, 24326, 28110, 24377, 24471, 24979, 25209 to 25220, 30344 and 32167 of 2004, for Respondents-1 and 2 in W.P. Nos. 23397 to 23399 of 2004 and for Respondents-1 to 3 in W.P. Nos. 23312 to 23314 of 2004, A.N. Venugopal Gowda, for Respondent-2 in W.P. Nos. 23248 to 23250, 23265 to 23270, 24326 and 32167 of 2004, for Respondents-2 and 3 in W.P. Nos. 23521 to 23554, 24377 and 25209 to 25220 of 2004, for Respondent-3 in W.P. Nos. 23397 to 23399, 26696 and 30344 of 2004 and for Respondent-4 in W.P. Nos. 23312 to 23314 and 28110 of 2004, M.R. Naik, for Respondent-10 in W.P. Nos. 23521 to 23554 of 2004, H. Sannamalligai, for Respondent-4 in W.P. Nos. 25209 to 25220 of 2004 and for Respondent-13 in W.P. Nos. 23521 to 23554 of 2004, Vishwanath, Associates for Respondent-3 in W.P. Nos. 23265 to 23270 of 2004 and for Respondent-5 in W.P. Nos. 23248 to

Judgement

R. Gururajan, J.—All these petitions are filed by the students of engineering/medical/dental courses conducted by the University in Karnataka.

2. All these petitioners are before me aggrieved by the show-cause notice dated. 5-11-2003 issued to each one of the petitioners, in the matter of enquiry into abnormally high marks scored by non-Karnataka candidates in CET 2003 and also the subsequent report of the Enquiry Officer dated 20-12-2003 and the Government Order dated 2-4-2004 passed against these students. The facts and circumstances raised by the petitioners are almost same or similar excepting some variance in some of the petitions. Hence a common order is passed.

3. W.P. Nos. 23312 to 23314 of 2004 is taken as a leading petition for deciding these petitions.

4. Petitioners in these petitions are studying in various professional courses in different professional colleges conducted by the University in the Karnataka State. Petitioners are natives of Bihar, Jharkhand and Uttar Pradesh. They responded to Karnataka CET 2003 notification issued by the Government of Karnataka for Common Entrance Test 2003-04. The true copy of the brochure of the Government mentions in para 3 at page 4 that a candidate who has passed the second PUC or 12th standard or equivalent examination (hereinafter referred to as Qualifying Examination -- "QE" for short) with Physics and Mathematics along with Chemistry/Bio-Technology/Computer Science/Electronics/ Information Science/Biology as optional subjects with English as one of the languages of study and obtained at least 45% marks in the optional subjects is eligible for Engineering/Technology/ Architecture courses.

5. Petitioners in W.P. Nos. 23312 to 23314 of 2004 are general merit candidates. They had passed 12th standard examination with 66%, 54.667% and 70%; respectively. They sent their application form and appeared for CET 2003 which was conducted on the basis of multiple choice questions. The petitioners secured 70,972%, 59,583% and 75.833% respectively in the CET 2003. The marks they have secured in CET 2003 is not very much higher than the marks secured by them in the 12th standard examination. Admission orders of the petitioners issued by CET 2003 are produced at Annexure-B, C and D respectively. Petitioners have referred to their achievements and they refer to their efforts to get marks by joining JEE 2003 Screening Test. It is not necessary to deal with these details at present.

6. Each one of the petitioners received notice dated 5-11-2003 from respondent 2 (University). In the show-cause notice they were called upon to explain as to why it should not be held that they have committed an examination malpractice

by illegally procuring the correct questions and answers from a person or a crime syndicate, which had illegally acquired knowledge about the questions appearing in the question papers of CET 2003. Petitioners submitted their reply in the matter. Thereafter the Enquiry Officer in his report dated 20-12-2003 has ruled that the 90 candidates described in para 24 of the report are undoubtedly guilty of examination malpractice and their result in CET 2003 deserves to be annulled. It is also appropriate to permanently debar these candidates from appearing in any of the entrance tests conducted by the CET Cell in future and also debar them from seeking admission to any of the professional colleges within Karnataka, otherwise. The Government by its order dated 2-6-2004 accepted the report and the admission of the petitioners stood cancelled in terms of the said order. The Government ruled that the concerned college may relieve these students forthwith. The said candidates were further debarred from appearing for any of the CETs conducted by the CET cell in future. They are also debarred from admission to any of the Professional Colleges within Karnataka by the management of the colleges. Aggrieved by the same petitioners are before me.

7. Respondent-State Government has entered appearance and has filed common counter in all these cases. They say in the counter that the CET Cell issued notification calling upon the application from the eligible candidates from conducting entrance test for selection of the candidates for the professional courses for the academic year 2003-04. In pursuance of the notification issued by the CET Cell, petitioners applied and appeared for the CET conducted by it. On the basis of the marks obtained by the candidates, marks list was published by the CET Cell and the students were admitted to the respective colleges. Thereafter M.S. Ramaiah Medical College, Bangalore wrote a letters and brought to the notice of the Government that some of the non-Karnataka students who have scored very low marks in the QE have scored abnormally high marks in the CET. On the basis of the complaint received by the said college, the State Government ordered an enquiry by appointing the Chief Secretary, KPSC Mr. B.A. Harish Gowda as the Enquiry Officer to ascertain the correctness of the allegations made by the said college. Show-cause notices have been issued to 112 candidates. The show-cause notice was served on 93 candidates, 86 candidates have submitted their reply to the said show-cause notice. Show-cause notice could not be served on the 19 candidates. Those candidates have surrendered the seats to the management and left the college. Out of 112 candidates, 90 students belong to Bihar and Jharkhand States, 11 students from Uttar Pradesh, 3 students from Madhya Pradesh, 4 students from West Bengal, 2 from Rajasthan and 1 each from Chattisgarh and Orissa. Respondents have referred to the material details in terms of the findings in the body of the objections statement. It is further stated that as per the finding recorded by the enquiry officer, these candidates have secured very low marks in the Qualifying Examination. There is no malpractice in the examination hall or general leakage of question paper. Respondents refer to earlier judgments of this Court in W.P. No. 26210 of 1998. They further say that the enquiry officer granted opportunity

to the petitioners and after considering the statement of each one of the students, submitted a detailed report. The State Government accepted the same and came to a conclusion that the 90 students were guilty of committing examination malpractice. The State Government accepting the enquiry report passed the impugned orders. There is no infirmity or irregularity in the orders passed by the State Government. They justify their action. Since all these matters were same or similar, these matters were clubbed and common arguments were heard by this Court.

8. Sri Udaya Holla, Sri Ashok Haranahalli, Sri Dinakar and Sri Ajoy Kumar Patil, learned Counsels appearing on behalf of the petitioners argued at great length to say that the entire action on the part of the Government runs counter to the provisions contained in CET Rules. They refer to Karnataka Selection of candidates for Admission to Engineering, Medical, Dental and Indian System of Medicine and Homeopathy Courses Rules, 2003 to contend that the entire action is without jurisdiction. They refer to Rule 19 of the Rules to contend that in the event of any misconduct or any malpractice, the Special Officer alone is competent to pass orders after following the procedure and that has not been done in the case on hand. They therefore say that the entire action is without jurisdiction in terms of the Rules. Learned Counsels also argue that the entire action is based on suspicion and suspicion cannot partake the proof in a matter like this. They refer to show cause at Annexure-N to say that the petitioners were called upon to explain as to why it should not be held that they have committed an examination malpractice by illegally procuring the correct questions and answers from a person or a crime syndicate, which had illegally acquired knowledge about the questions appearing in the question papers of CET 2003. According to them, this is the basis for initiation of proceedings. They further invite my attention to the proceedings and in particular to passage at para 24 to say that the Enquiry Officer has not relied on Annexure-B1 to B4. Therefore, they say that the only allegation against them is with regard to obtaining question papers illegally from a crime syndicate. There is no evidence with regard to the crime syndicate or mafia as held by the Enquiry Officer. They say that the entire report if read as a whole would show that it is not based, on any acceptable evidence as understood in law. It is a finding based on evidence. Such finding according to the learned Counsel cannot be accepted in a Court of law. They further complain that the State Government has committed a serious error in accepting this unsustainable report for punishing the students. Learned Counsel also refer to me the explanation submitted by each one of the candidates and they say that it is possible for a candidate who has secured very low marks in the QE to secure a higher marks in the CET. They also refer to the pleadings to contend that some of the petitioners have chosen to obtain necessary coaching from other institutions in the matter. They say that the finding of the Enquiry Officer and the subsequent proceedings require cancellation by this Court. They refer to certain judgments in support of their argument.

9. Per contra, learned Government Advocate invites my attention to the material on record to say that a reading of the entire material on record would show that a set of candidates from a particular State have obtained higher marks in CET as compared to their marks in the QE conducted by the respective State Governments. He says that if read as a whole, it would show that examination malpractice has been committed by these petitioners. He says that even otherwise, they could not have secured such high position in terms of the finding of the Enquiry Officer. He further refers to me the rules to contend that necessary power is available to the Government in the matter. He supports the order.

10. After hearing the learned Counsels on either side the following points arise for my consideration.

1. History of the case
2. Basis for proceedings
3. Rules of natural justice
4. Findings of the Enquiry Officer
5. Order of the Government
6. Relief

1. History of the case:

11. The petitioners are non-Karnataka students. They come from Bihar, Jharkhand, Madhya Pradesh, Orissa, Rajasthan and Uttar Pradesh. The State Government has issued a notification in the matter of selection of candidates to the professional colleges in the State of Karnataka in terms of the rules for the academic year 2003-04. Petitioners applied and appeared for the CET and they were successful in the matter. Second respondent-College issued a letter dated 2-8-2000 stating that some of the non-Karnataka students who have secured very low marks in the QE have secured abnormally high marks in the CET. In the light of this letter, the Government ordered an enquiry to be conducted by Sri B.A. Harish Gowda, the then Secretary of Karnataka Public Service Commission to ascertain the correctness of the allegations made by the said college. Thereafter, the Enquiry Officer has chosen to issue show-cause notice to each one of the petitioners on the ground of a strong suspicion that all these students are guided by a common force/a person/group of persons in choosing the answers. It is also stated that the petitioners are the beneficiaries of a crime syndicate which master minded the illegal acquisition of knowledge of the questions appearing in all the question papers and supplied to them the questions and the purported correct answers well before the commencement of the examination. Replies were obtained and thereafter the Enquiry Officer has chosen to give his findings on 20-12-2003. Though the findings and facts are disputed, the history is not disputed.

2. Basic for proceedings:

12. Material on record would show that the basis for the proceedings is a complaint by a private management of a professional college. According to that complaint, certain non-Karnataka students who have secured low marks in the QE had secured abnormally high marks in CET 2003. The show-cause notice also refers to the complaint in the matter. In the light of the complaint, the Government has proceeded by way of an enquiry in terms of the proceedings at Annexure-N. In the show-cause notice it is mentioned that the pattern of answering question papers may be with small exemption here and there as depicted in Annexure-B1 to B4 are nothing give rise to a strong suspicion that all the petitioners have been guided by a common force or person or group of persons in choosing the answers. Any examination malpractice in the examination centres or in the common entrance test cell subsequent to the examination is ruled out. The only possibility that could be through is the prior knowledge of the questions that had appeared in the question papers and the correct answers to the question. In the show-cause notice, it is further stated that in other words, it becomes amply clear that a person or a group of persons had master minded a mass examination malpractice by illegally acquiring knowledge of bulk of the questions that had appeared in the question papers, prior to the commencement of the examination. The further basis is seen in the subsequent paragraphs, stating that the petitioners were the beneficiaries of a conspiracy hatched by a crime syndicate which master minded the illegal acquisition of knowledge of the questions appearing in all the question papers and supplied to the petitioners the questions and the purported correct answers well before the commencement of the examination. Therefore, what is clear to this Court is that the basis for the enquiry is (1) a complaint by a private college that certain non-Karnataka students who have secured low marks in the QE had secured abnormally high marks in CET 2003; (2) students were guided by a common force in choosing the answers; (3) a person or a group of persons had master minded a mass examination malpractice by illegally acquiring knowledge of bulk of the questions that had appeared in the question papers, prior to the commencement of the examination; (4) petitioners were the beneficiaries of a conspiracy hatched by a crime syndicate. Let me see as to whether these basic issues have been proved in a manner known to law.

3. Rules of natural justice:

13. It is seen from the material that the petitioners did make a complaint of violation of rules of natural justice. Some petitioners complain of inadequate opportunity. A few petitioners say that opportunity was given. Sri Dinakar, learned Counsel says that those opportunities granted by the respondents cannot be termed as acceptable opportunities in law. Let me see as to whether rules of natural justice have been violated or not.

14. Annexure-N is the show-cause notice issued to the petitioners. It is not the case of the petitioners that they did not understand the show-cause notice or it

lacks material details/facts. In fact they have chosen to reply parawise. They were permitted to participate in the proceedings as I see from the proceedings. This Court has to notice that this is not a judicial proceedings which require stricter rules of natural justice in terms of the statute governing such matters. The entire proceedings is nothing but a fact finding body and reasonable opportunity has been given. Therefore I am satisfied that natural justice argument has to be rejected and even otherwise it is not shown to me as to what prejudice has been caused to each one of the petitioners in the case on hand. Hence I answer this issue in favour of the Government.

4. Findings of the Enquiry Officer:

15. Elaborate arguments have been advanced by the learned Counsel for the petitioners denying the allegations made by the respondents. According the respondents, mass examination malpractice has been committed by the students with the help of crime syndicate. Most of the students have placed some material on record as to how they could obtain high marks in the matter. They have tried to explain their stand in the matter. Several students have under gone some coaching/adopting/learning from some other institution in the matter. They have also stated that they have put in better effort in the matter. The Enquiry Officer while considering the stand of the students has divided his report into various parts. He has taken great pains in recording his finding in the matter. In the report he has annexed Annexure-B to B4. Replies are filed at Annexures-F1 to F86. Depositions are at Annexures-D1 to D93. While presenting the facts he has noticed that some of the students are from Bihar and Jharkhand. He has also culled out the background of 17 candidates at page 9. He has observed that most of the students completed their intermediate during 1997 and 1998 and the subsequent years up to 2003 is a considerable period and ruled that it is a well-known fact that as one moves away from the days of his studies, the memory gets diluted. He has also observed that some of the candidates though have joined B.Sc., immediately after completion of intermediate could not even complete B.Sc., and ruled that in such circumstance it is very difficult to believe that after a gap of five years those candidates have become extremely brilliant. Thereafter, he has noticed in para 17 the performance of many amongst the 112 in the previous CET for the purpose of consideration of the case on merits. In para 18 he again notices that 19 candidates have not participated in the enquiry.

16. He notices the judgment of this Court in W.P. Nos. 26120 of 1998, 26507 to 26509 of 1998 with regard to the law on the subject. After noticing all these cases he has chosen to give a finding at para 24 of the report. At this stage, I must notice basis for the enquiry and the basis of the show-cause notice in the case on hand. It is mentioned that the Ramaiah Medical college informed the CET cell with regard to certain candidates securing low marks in their respective states and securing high marks in the CET, 2003. This is the foundation for this enquiry. Even the Government in its preamble has noticed the complaint of Ramaiah Medical College and thereafter it has constituted a committee with

regard to ascertaining the truth. The show-cause notice issued to the candidates read as a whole would show that a suspicion in the light of Annexure-B1 to B4 gets its birth on account of higher percentage in CET. In fact the Enquiry Officer also refers to this aspect in the earlier paragraph Annexures-A1 and A2 etc. But however, at the time of giving final verdict, he has chosen to say in para 24 as under:

"24. 112 candidates dealt in this report were chosen, as narrated in paragraph 3 above, for further probing solely on the basis of a single criterion. On the other hand, it is very much necessary to classify them on the basis of the details about them that have emerged consequent to the present enquiry. In the show-cause notice, the pattern of choosing the correct answers as depicted in Annexure-B1 to B4 to show the show-cause notice was made as one of the grounds for suspecting the complicity of the said 11 candidates in a conspiracy. However, at this stage, I have not relied upon that factor in coming to a conclusion. On the other hand, I have given up that factor and have based my finding on the rest of the circumstantial evidence that has emerged because of the subsequent inquiry and analysis. I have thought it proper to classify these 112 candidates into three categories (a) those who are not guilty in spite of their low QE marks, because of the other valid reasons; (b) those who deserve benefit of doubt in the absence of clear circumstantial evidence; and (c) those who are guilty of examination malpractice beyond all doubt".

17. Four candidates have been found not guilty. While providing reasons the Enquiry Officer has chosen to say that the performance in CET in comparison with the results of his previous exams looks normal.

18. In case of benefit of doubt candidates, he has chosen to notice the appearance of these candidates for IITJEE and also the ranking in 2002-03. 18 candidates were provided benefit of doubt.

19. In case of candidates who are found guilty beyond doubt the Enquiry Officer has given his reasons at para 11 of the respondent. He has chosen to rely on PCMB marks secured in 12th standard vis-a-vis CET ranking. It is further seen that he has also relied on Annexure-D series. It is seen from Annexure-D series that the candidates have given some explanation in the matter. Those explanations have not been given its due weightage.

(A) In Annexure-D23 Sri Dayanand Singh states that he appeared for UP CPMT. His rank was 5651. He could not get a seat in a private college. He did his intermediate 10 years ago and the performance which looks very bad now was in fact very good those days.

(B) In Annexure-D24 Sri Sunil Kumar Thakur states that in 2000 he was selected for BAMS course but did not join. In 2001 in appeared for the CET examination conducted by the Bihar Government but did not any admission. In 2002 he appeared for CBSE entrance examination and got 41 rank in B. Pharma but did not join the course. In 2003 he had appeared for CET conducted by the Bihar

Government and passed Ist stage, and as he had come for seat selection to Karnataka he did not get any seat in Bihar.

(C) In Annexure-D25 Sri Rajesh Kumar Ranjan states that he appeared for entrance examination in Bihar in the year 1999 and Competitive examination conducted by JIPMER, Pondicherry in 2001.

(D) In Annexure-D26 Sri Kundan Kumar states that he appeared for IITJEE and also Roorkhee Engineering, Entrance Examination and he had scored 3601 in IITJEE. During 2003 in addition to Kar. CET I he had also given the CBSE entrance test.

(E) In Annexure-D27 Sri Raturaj states that he appeared for IITJEE MP PET and Kar., CET.

(F) In Annexure-D28 Sri Abhay Ranajan states that he has secured 6791 in IITJEE and 1045 rank in Kar. CET.

(G) In Annexure-D29 Sri Faheem Ahmed states that he joined MA Course in Lucknow University. He has scores 4500 rank in Kar. CET 1999.

(H) In Annexure-D30 Sri Hemandra Kumar states that he appeared for Karnataka CET and got a medical rank around 5000 in 2001 and in 2002 he has secured 3055 rank.

(I) In Annexure-D31 Sri Rajeev Kumar states that he had appeared for MP Engineering, entrance Examination in 2001 and got 30,000 rank. In 2002 along with Bihar Engineering Entrance Test, IIT HEE and UP Engineering Admission Test, he had also appeared for Kar. CET 2002. In Kar. CET 2003, he got 388 rank. In Bihar Engineering Entrance Test his rank was 419.

(J) In Annexure-D32 Sri Manoj Kumar states that though there is a gap of five years after completion of intermediate course he did not forget what he has studied in intermediate course as he immediately joined a goal practice center where model tests are conducted for preparation for Medical Entrance Test. In Kar., CET 2002 he has secured a medical rank of 1560.

(K) In Annexure-D33 Sri Mrityunjay Kumar states that he appeared for Kar. CET, Manipal Academy, AIMPT Ramachandra Medical College, Tamilnadu and also appeared for AIJMS para Medical Course entrance test. He got admission order for B.Pharm Course in Ramachandra Medical College, Chennai.

(L) In Annexure-D34 Sri Niraj kumar states that in 2003, he had given Kar. CET and made the preparation in Bangalore itself.

(M) In Annexure-D35 Sri Syed Shad Mohsin states that in 2002 he had appeared for Kar. CET and secured 1051 rank. He was selected for a dental seat but did not join.

(N) In Annexure-D36 Sri Nitesh Kumar states that in 2001 and 2002 he applied for CBSE AIPMT and Manipal Academy Admission Test.

(O) In Annexure-D37 Sri Mukesh Kumar states that in 2003 he appeared for CBSE, IITJEE and Cochin University Test. In the IITJEE he cleared the screening test but did not succeed in the mains. In CBSE he secured a rank about 8000 rank. In Cochin University his rank was 890. When he got admission in Kar. CET, he left the Cochin University.

(P) In Annexure-D38 Sri Kohalikant Sinha has stated that he has secured 645th rank in Kar. CET by attending medical tutorial coaching center.

(Q) In Annexure-D39 Sri Rishu Raj has stated he appeared for Kar. CET during 2002 and had secured 10,758 rank. During 2003, I had appeared for IITJEE and he got 16000 rank.

(R) In Annexure-D40 Sri Dhiraj Kumar states that in 2002 he got 9136 rank. He studied books containing previous years CET questions and also carried out practice exercises.

(S) In Annexure-D41 Sri Kumar Anjani Misra states his rank in CET 2002 was 25025. He appeared for entrance test conducted by Bhartiya Vidya Peeta, Pune and Kar. CET in 2003.

(T) In Annexure-D42 Sri Pushkar Bhardwaj states that in 2002 he had appeared for Kar. CET and he has secured a medical rank of 8447.

(U) In Annexure-D43 Sri Alok Kumar states that in 2001 he had appeared for CBSE Medical, BHU Medical and Bharatiya Vidyapeeta. In 2002 he had appeared for CBSE Medical Entrance Test.

(V) In Annexure-D44 Sri Om Prakash Pandey states that in 2002 he had appeared for Bihar Entrance Test and did not qualify for the main test. In 2003 he had appears for CBSE AIPMT and Kar. CET.

(W) In Annexure-D45 Sri Kaushal states that he joined Akash Institute at Patna to prepare for the entrance examination.

(X) In Annexure-D46 Sri Sarvesh Kumar states that he appeared for IITJEE and Bihar Common Entrance Test.

(Y) In Annexure-D47 Sri Rohit Kumar Agarwal states that he appeared for Manipal Academy, Kar. CET, CBSE admission test and Chattisgad PMT. He secured 181 rank in Chattisgad PMT.

(Z) In Annexure-D48 Gaurav Prakash Sinha, he joined coaching classes. In 2002 he has sacred 19238 Engineering rank.

(Za) In Annexure-D49 Sri Maink Chatterjee has stated that he has secured a medical rank 21071.

(Zb) In Annexure-50 Sri Tahsin Mushtaque has stated that he could not do well in earlier examination because of death in the family.

20. From a reading of these reasons what is clear to this Court is that some of the candidates have undertaken some coaching in the matter. It cannot totally be ruled out that a bad performer can do well in subsequent examination with coaching/better effort and it is not necessary that a bad candidate has to be bad always as held by the Enquiry Officer. He may change his career either by hard work or by coaching or by enthusiasm in the matter. Moreover it cannot be forgotten that these candidates were valued by the valuers of CET. Insofar as Sl. Nos. 29 to 47 are concerned, the Enquiry Officer states in para 18 of his report that these candidates have either disappeared from the scene after reporting to the college and surrendering the admission order issued by the Cell or have surrendered the seat at the CET Cell after joining at the concerned colleges. Thereafter he has come to a conclusion that they have either sold away the seats clandestinely or given up the seats to the managements after collecting hefty premia. This finding to say the least is unwarranted in the absence of any acceptable material available on record. It is a serious conclusion. For a sale there must be two parties. The first party is not forthcoming.

21. The Enquiry Officer has arrived at this conclusion on mere surmises and conjectures and as understood in law.

22. Insofar as Sl. No. 49 to Sl. No. 90 he has stated that the past and simultaneous academic achievements elsewhere or in QE are not commensurate with the rank obtained in CET 2003. As I mentioned earlier, it is seen from the report of the Enquiry Officer that he is not relying on Annexure-B1 to B4 as one of the grounds for coming to a conclusion. On the other hand he has stated that he has based his finding on circumstantial evidence. Having said so, he cannot again find that the marks obtained by the candidates in simultaneous academic achievements or else were or in QE are not commensurate with the rank in CET 2003. In these circumstances, I am of the view that the learned Counsels for the petitioners are right in their submission that the finding of the Enquiry Officer can neither be said to be reasonable or said to be a finding that could be rightly accepted in a Court of law. I must also notice at this stage, that various candidates have taken coaching in certain institutions and they have put in efforts in terms of the explanation submitted in terms of Annexure-D series. They have not been properly adverted/referred to in the report and instead the Enquiry Officer in the last column has only referred to Annexure-D series. Annexure-D series gives some explanation and that explanation has not been properly adverted to or considered by the Enquiry Officer. In para 25 he gives a general finding that the examination conducted by the CET cannot be equated to a test conducted by Manipal Academy of Higher Education, Cochin University and Bharateeya Vidyapeeta, Pune. I am unable to understand this reasoning in the given circumstances. He has not collected any material with regard to the method and manner in which the tests are conducted by the other institutions in the case on hand. There being no material available on record it is not open to the Enquiry Officer to give a categorical general finding of no equation in the matter. He further states that any amount of coaching by private institutions

cannot be equated to formal education and such coaching could not have made the candidates extraordinarily brilliant to the extent that they could score two digit ranks in the CET 2003. After giving this reasoning, he gives one more finding with regard to the modus operandi of mafia in his report.

23. At this stage, I must refer to the enquiry proceedings and the initial show-cause notice. Initial proceedings was at the instance of . Ramaiah Medical College. The College never referred to any mafia in its complaint. Be that as it may. The show-cause notice refers to examination malpractice by illegally procuring the correct questions and answers from a person or a crime syndicate, which had illegally acquired knowledge about the questions appearing in the question papers of CET 2003. Assuming for the sake of argument that there is some malady somewhere the Enquiry Officer in paras 28 and 29 notices the procedure of CET. He comes to a categorical conclusion that it is very difficult in the normal course for a candidate or even for a mafia to get know about the identity of the question paper setters and then to get in touch with them. Question paper printers, who are about a dozen in this country are professionals in the field and their stake in the business in which they have invested crores will be much higher than what they would get by revealing the questions or leaking the question papers. He gives a clean chit to the officers of the CET by saying that the possibility of question papers getting leaked or questions getting copied at any stage earlier to the question papers reaching the treasuries, well nigh impossible. After coming to this conclusion on the part of the CET he only doubts by saying that possibility of leakage of question paper from one of the treasuries is highly probable. Therefore, from the report read as a whole, what is clear to me is that the probability is from the treasury. It is un-understandable as to why he did not get hold of treasury officers before giving his finding in the matter. After all the students are facing threat to their future. The charge is one of malpractice in the examination by illegally procuring the correct questions and answers from a person or a crime syndicate. Where did they procure when and how did they procure is not forthcoming either by evidence or by findings. Report refers to a person or a crime syndicate and identity of which is unknown even to the Enquiry Officer. In such circumstances, can the Enquiry Officer find these students guilty is a question posed to render justice to the parties.

24. Suspicion if not proved remains only suspicion. Suspicion cannot partake proof. A reading of the entire report would show that it is only a lurking suspicion or doubt in the mind of the Enquiry Officer. He himself is not sure as to how this could have happened. If he has not sure of himself, I do not think that he should find the students guilty on the ground of mafia or syndicate. On the other hand, he should have closed the enquiry for want of material with a right to reopen after collecting the material. In these circumstances, I want to make myself clear. This Court is not against cleansing the system on the other hand, this Court is firmly of the view that unless the thorn of doubt is removed in the education field, the entire future of the country is at stake. A well-intended Enquiry Officer somehow has missed some link somewhere resulting in this

unsustainable report in the given circumstances.

25. Petitioners have placed before me several case-laws in support of their submission.

26. The Apex Court in the following cases has ruled as under:

(a) Commissioner of Income Tax, Bombay and Others Vs. Mahindra and Mahindra Limited and Others,

"If the administrative or executive action or decision is perverse of such that no reasonable body of persons, properly informed, could come to or has been arrived at by the authority misdirecting itself by adopting a wrong approach or has been influenced by irrelevant or extraneous matters, the Court would be justified in interfering with the same".

(b) (1989)2 SCC 25 (sic) - (paras 8 to 12)

"In the present case the appellant had not been afforded reasonable and fair opportunity of showing cause inasmuch as the appellant was not apprised of the exact content of the professional misconduct attributed to him and was not made aware of the precise charge he was required to rebut. The conclusion reached by the Disciplinary Committee in the impugned order further shows that in recording the finding of facts on the three questions, the applicability of the doctrine of benefit of doubt and need for establishing the facts beyond reasonable doubt were not realised. Nor did the Disciplinary Committee consider the question as to whether the facts established that the appellant was acting with bona fides or with mala fides, whether the appellant was acting with any oblique or dishonest motive, whether there was any mens rea, whether the facts constituted negligence and if so whether it constituted culpable negligence. Nor has the Disciplinary Committee considered the question as regards the quantum of punishment in the light of the aforesaid considerations and the exact nature of professional misconduct established against the appellant. If proceeded on conjectures, surmises and presumptions. The impugned order passed by the Disciplinary Committee, therefore cannot be sustained.

Since all these aspects have not been examined at the level of Bar Council, and since the matter raises a question of principle of considerable importance relating to the ethics of the profession which the law has entrusted to the Bar Council of India, it would not be proper for the Supreme Court to render an opinion on this matter without the benefit of the opinion of the Bar Council of India, it would not be proper for the Supreme Court to render an opinion on this matter without the benefit of the opinion of the Bar Council of India which will accord close consideration to this matter in the light of the perspective unfolded in this case both on law and on facts. Therefore, instead of examining the matter on merits, it is remitted back to the Bar Council of India".

(c) Pandurang Dattatraya Khandekar Vs. Bar Council of Maharashtra, Bombay and Others,

"The charges of professional misconduct must be clearly proved and should not be inferred from mere ground for suspicion, however reasonable, or what may be error of judgment or indiscretion. The finding in disciplinary proceedings must be sustained by a high degree of proof then that required in civil suits, yet falling short of the proof required to sustain a conviction in a criminal prosecution. There should be convincing preponderance of evidence. In an appeal u/s 38, the Supreme Court would not, as a general rule, interfere with the concurrent finding of fact by the Disciplinary Committee of the Bar Council of India and the State Bar Council unless the finding is based on no evidence or it proceeds on mere conjectures and surmises".

(d) Union of India and another Vs. G. Ganayutham (Dead) by LRs.,

"The current position regarding proportionality in administrative law in England and India can be summarised as follows:

(1) To judge the validity of an administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural in properties or was one which no sensible decision maker could, on the material before him and within the framework of the law".

27. From these judgments what is clear to this Court is that this Court can go into the finding and find out as to whether the said findings are based on facts or the said finding are reasonable in the given circumstances.

28. In the case on hand, this Court has no option but to express its dictum of non-acceptable report in the light of the report being in form of a suspicious document without proof as understood in Courts of law.

ORDER OF THE GOVERNMENT

29. This Court cannot but observe that based on such report penalties are imposed. Penalties can cause education death to students. Penalties in some cases cause social boycott. Therefore before ordering penalty, the authority concerned has to apply its mind as to whether the findings are acceptable or reasonable in terms of law governing such matters. Unfortunately, in the case on hand, the Government has failed to apply its mind and on the other hand it has virtually abdicated its duty, in admitting the report in its order without applying its mind with regard to the serious shortcomings which has been referred to by me in the earlier paragraphs by this Court. Therefore, the penalty in the case on hand in the opinion of this Court is a case of non-application of mind.

30. At this stage, I must also notice a legal argument advanced by the petitioners. Parties are governed by Karnataka Selection of Candidates for Admission to Engineering, Medical, Dental and Indian System of Medicine and Homoeopathy Courses Rules, 2003 of candidates 2003. In fact these rules provide for CET and other tests in terms of the proceedings. A detailed procedure is prescribed in the rules. It is unnecessary to refer to all parts of Rules. Rule 19

provides for penalties. It reads as under:

"19. Penalties.--(1) Where a candidate or his parent or guardian furnishes any incorrect information in the application for common entrance test or produces any documents/records like incorrect marks card/s or statement of works or any certificate/s or affidavit/s etc., and commits fraud of any kind by himself or through any other person obtains allotment by making incorrect statement or commits forgery or impersonation or indulges in any malpractice or makes any statement which is not true, at the time of entrance test or the seat selection process and obtains the admission ticket or any other record from the CET Cell or allotment order or where any candidate commits malpractice of any kind in the qualifying examination or common entrance test conducted by CET Cell or is the beneficiary of any malpractice detected or noticed during the common entrance test or the seat selection process or subsequent to the issue of the admission order, the seat if any, allotted to such candidate, shall be liable to be forfeited at any time during the period of candidate's study of the course".

31. It is very exhaustive. Rule 19(2) provides for a parent or guardian being liable for both civil and criminal action including forfeiture of the fees. A procedure is prescribed under Rule 19(3). It provides that the Special Officer shall pass orders in that regard after holding such enquiry as he deems necessary, after giving reasonable opportunity to the candidate or parent or guardian concerned to make representations, if any. Special Officer has been defined in terms of the Rule 2(r) meaning an officer belonging to IAS, appointed by the Government, in connection with conduct of Common Entrance Test and regulation of consequential seat selection process. Admittedly in the case on hand, proceedings have not taken in terms of the Rule 19(3) read with the definition. Therefore legally speaking, the penalties by way of forfeiture cannot be ordered without following Rule 19 in the case on hand. Therefore the penalties suffer from non-compliance of Rule 19 of the Rules.

32. It is also seen by this Court that the Government has issued the following penalty:

- (1) Annulling CET results.
- (2) Cancellation of admission orders.
- (3) Relieving the petitioners from the college.
- (4) Petitioners/candidates were further debarred from appearing in any of the CETs conducted by the CET cell in future.
- (5) Petitioners are also debarred from admission to any of the Professional Colleges within Karnataka by the management of the colleges.

33. Most of the penalties are not available in terms of the Rules. After all parties are governed by Rules. When rules do not provide for such penalties, the Government cannot impose various penalties without there being any power

available to them in terms of the Rules governing the case on hand. In these circumstances, I accept the argument of the petitioner that the petitioners are to be granted relief in terms of the prayer made by them.

RELIEF:

34. Before concluding this Court is greatly perturbed with regard to the facts in the case on hand. The intention of the Government is laudable and appreciable. This Court notices that in respect of one set of petitioners, it is stated that the Enquiry Officer is biased against certain students of non-Karnataka origin. I do not find much substance in the matter. Even otherwise, I am of the firm view that no authority should entertain or view a matter on regional prejudice and any such prejudice would affect the oneness of the country.

35. However, the Government cannot forget its duty of observing the well-accepted legal principles in these matters as otherwise the well-intended proceeding results in a fiasco as in the present case. Therefore the Government should be careful before launching such action in the larger interest of education system itself.

36. I cannot but notice the argument of the respondents that this Court in W.P. No. 26210 of 1998 has considered with regard to malpractice. As I mentioned earlier this Court is equally anxious to remove the thorn of malpractice in the education system. But the Government has to blame itself for inadequate material in the case on hand. In fact the judgment of this Court rendered in W.P. No. 26120 of 1998 and connected matters cannot be applied with reference to the facts of this case. A reading of the said judgment would show that the Court was concerned in that case with regard to the candidates who appeared from Koppal Centre. Malpractice was proved in terms of the finding in that case. In fact the Court in that case notices the facts of the case to come to a conclusion that the malpractice is proved. In such circumstances, the Court ruled in favour of the authorities. In fact even in that case the Court noticed the petitioners can take a chance in the next academic session or seek admission against unutilised seats if and when they are transferred to the managements for being filled up. I cannot but notice the plea of Crime syndicate / Education mafia in this case. Crime Syndicate has become a word in CET. In fact this is what the Court says with regard to "Crime Syndicate" and "Education Mafia".

"I do not however find any conclusive documentary or circumstantial evidence to support the conclusion that the incident is the handiwork of any Mafia or Crime Syndicate, but if the authorities have any information or inkling about any such illegal activities, it is high time for them to take stern action in the matter in the interest of keeping the stream of selection process pure and unpolluted. The respondents must ensure that those within the official machinery without whose co-operation and connivance the mafia and syndicates cannot prove effective, are also identified and purged from the system".

37. This finding of the learned Judge is squarely applicable to the facts of this

case. The respondents are unable to point out any official machinery without whose co-operation and connivance the mafia and syndicate cannot prove effective in such cases. So long that link is missing the respondent has to lose the case.

38. Having come to this conclusion that the lacks accepted material and accepted material finding. What next is the question. In the light of unsustainable finding, and in the light of violation of Rule 14 this Court has no option but to set aside the entire proceedings for want of evidence in these cases. Students are entitled to succeed in the matter. However, one question that remains is the future action in the event of any additional material. Sri Holla, learned Counsel says that no future action is possible or permissible. He may be partly right in saying that no future action is possible with the same material. However, it cannot be forgotten that a rot in the education system has to be cleaned and any unclean system would tell upon the society itself. Professional course has its own name and place in the education system. No impurity is permissible in professional courses. Taking into consideration the importance of professional courses and also the importance of the education system, I deem it proper to reserve liberty to the respondents to reopen the case with notice and opportunity in the event of the respondents coming into their possession any new material / additional with regard to these cases.

39. Ordered accordingly. No costs.