
(2013) 09 AP CK 0119

In the Andhra Pradesh High Court

Case No : W.P.Nos. 19035 and 19279 of 2013

V. Venkat Sai Anurag

APPELLANT

Vs

The Government of India

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2014) 1 ALD 154 : (2014) 1 ALT 758

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : M. Rama Rao, for the Appellant; A. Chaya Devi, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—These two Writ Petitions have been filed by two aspirants for admission into Engineering course in the National Institutes of Technology and the Indian Institutes of Technology. They have appeared in the Joint Entrance Examination (JEE-Mains) held for the year 2013 in November 2012. The marks list was placed in the Website by the Central Board of Secondary Education (CBSE) on 7-5-2013. In the public notice issued by respondent Nos. 2 and 3, it was mentioned that the OMR answer sheet and the key answers will be made accessible to the candidates on payment of Rs. 500/-. The petitioner in W.P.No. 19035/2013 averred that as the key answers were not made available, he had to approach the Delhi High Court, which by order dated 26-6-2013, has directed to supply the answer key and that in pursuance of the said direction the key answers were supplied to the petitioner on 28-6-2013. Both the petitioners pleaded that on comparison of their OMR answer sheets with the key answers, they have found that the key answers themselves were wrong in respect of certain questions. The petitioner in W.P.No. 19035/2013 has questioned the correctness of the key answers in respect of question No. 41 in Chemistry and question Nos. 4, 19 and 14 in Physics. The petitioner in W.P.No. 19279/2013 questioned the correctness of the key answers relating to question No. 15 in Chemistry; question Nos. 20 and 27 in Physics and question No. 71 in

Mathematics. According to the petitioners, they have given correct answers to those questions and that they were not only denied marks in respect of those questions but also their marks were reduced by awarding negative marks based on the purported wrong key answers. In support of their respective pleas, the petitioners have filed the opinions of certain experts whose identity is not disclosed. When these Writ Petitions came up on 31-7-2013, this Court has directed the respondents to file filing counter affidavits. Accordingly, counter affidavits have been filed in both the Writ Petitions by the Assistant Secretary of the CBSE, Regional Office, Chennai. It is denied in the counter affidavits that the key answers published by respondent No. 2 are wrong in respect of the questions pointed out by the petitioners. It is further stated that the respondents have verified the questions disputed by the petitioners by referring the same to the subject experts and that the experts' opinions received by the respondents show that the key answers provided by them are correct in all respects. Respondent No. 2 has placed before the Court the experts' opinions in respect of all the disputed questions.

2. Dr. Harbans Lal, Retired Professor from the Delhi University has given his opinion on the questions in Mathematics; Prof. R.D. Shukla, Head of the Department, Science and Mathematics, NCERT and Prof. K.N. Upadhyaya, Professor of Chemistry, gave opinions on the questions in Chemistry and Sri H.C. Gupta, IIT Delhi, gave his opinion on the questions in Physics. All these experts have opined that the key answers published by the CBSE are correct and that therefore the marks awarded to the petitioners need not be revised.

3. Sri M. Rama Rao, learned Counsel for the petitioners, strenuously contended that the respondents have committed a serious illegality in not sending the answers supplied by the petitioners based on the experts' opinion to the experts chosen by them for opinion and that even the subject experts whose opinion is being now relied upon by the CBSE, have not given any basis with reference to the standard text books for arriving at the conclusion that the key answers published by the CBSE are correct. In support of his submission, the learned Counsel placed reliance on the Judgment of the Supreme Court in *Guru Nanak Dev University Vs. Saumil Garg and others* 2005 (13) SCC 749.

4. Smt. A. Chaya Devi, learned Counsel appearing for the respondents, submitted that not only that the CBSE has referred all the objections raised by the candidates all over the country to the experts for their opinion and modified the key answers depending upon their opinion before awarding the marks, after the petitioners have filed these Writ Petitions, the CBSE has referred the questions disputed by the petitioners to the experts, who opined that the key answers published by the CBSE in respect of the disputed questions are correct. She has further submitted that in respect of the same examination, certain aggrieved parties have moved the Delhi and the Punjab and Haryana High Courts in two separate Writ Petitions and by Judgments dated 10-7-2013 and 13-8-2013, the said Writ Petitions were dismissed by upholding the key answers

published by the CBSE and declined to interfere with the marks awarded.

5. I have carefully considered the submissions of the learned Counsel for the parties.

6. At the outset, it needs to be pointed out that the legal position in respect of the disputes arising under the academic matters has been well crystallised. The High Court, exercising its jurisdiction under Article 226 of the Constitution of India, will not sit in appeal over the opinion of the academic bodies as an appellate authority. Unless the decision making process is vitiated by patent illegality or arbitrariness, the Courts will not interfere with the decisions of the academic or expert bodies.

7. While dealing with a similar question relating to the correctness of key answer, in Kanpur University and Others Vs. Samir Gupta and Others, the Apex Court held that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It was further held that it must be clearly demonstrated to be wrong i.e., it must be such as no reasonable body of men well-versed in the particular subject would regard as correct.

8. In H.P. Public Service Commission Vs. Mukesh Thakur and Another, one of the three questions framed by the Supreme Court was as to whether it is permissible for the Court to take upon itself the task of an examiner or Selection Board and examine discrepancies and inconsistencies in question papers and evaluation thereof. In para-20 of the Judgment, the Supreme Court held as under:

In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for Respondent 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court.

9. In The President Board of Secondary Education, Orissa and Another Vs. D. Suvankar and Another, the Supreme Court held that the Court's interference with the decision of experts is very limited and is called for only for compelling reasons and apparent infirmity in evaluation.

10. In Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, it was held that the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich

experience of actual day-to-day working of educational institutions and departments controlling them and that it will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It was further held that finality has to be given to the result of public examination and in the absence of statutory provision, the Court cannot direct reassessment/re-examination of answer scripts. The ratio laid down in this Judgment was followed in *Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission and Others*, and *President, Board of Secondary Education (4-supra)*.

11. In the instant cases, the respondents have referred the questions disputed by the petitioners to the experts in the respective subjects. The experts have given their opinions to the effect that the key answers published by the CBSE are correct in respect of the disputed questions. The learned Counsel for the petitioners, has however, seriously disputed the opinions given by the experts by pointing out that no basis is shown by them in giving those opinions.

12. I am afraid, I cannot accept this submission of the learned Counsel, for, this Court does not possess the expertise to judge the correctness or otherwise of the opinions of the experts in academic matters. It is not the pleaded case of the petitioners that the experts who gave the opinions on the disputed questions are biased towards CBSE or that they have any vested interest. No doubt, in each of the opinions, the experts have expressed that the candidates cannot be given any benefit at this stage as the entire process of declaration of merit, counseling and admissions on the basis of declared merit list is already over. The expression of such opinion by the experts was wholly unnecessary. Be that as it may, the experts having already given their opinions, it is not possible for this Court to sit in Judgment over such opinions and refer the disputed questions to another expert body as requested by the learned Counsel for the petitioners.

13. In *Master Gautam Bathla Vs. CBSE 7* and *Sahil Soni Vs. CBSE 8*, in respect of JEE-Mains 2013, which is also the subject matter of the present Writ Petitions, challenge to the correctness of the key answers pertaining to different questions, was rejected by the Delhi and the Punjab and Haryana High Courts, respectively. The Delhi High Court has referred to the procedure followed by the CBSE and made the following observations:

The learned counsel appearing for the respondent CBSE states on instructions that under the scheme evolved by CBSE, the answer key is uploaded on the website of the organisation so as to receive feedback from the candidates who appeared in the examination. The feedback so received by CBSE is then placed before the experts for consideration. If the experts on consideration of the feedback find that any answer contained in the answer sheet was not a correct answer, the answer key would be modified accordingly, but if the experts are of the view that the answer contained in the answer-key is a correct answer, no

modification in the answer-key is made.

It is for the experts and not for the Courts to go into the correctness or otherwise of the answers contained in the answer-key. Since the experts appointed by CBSE have already reviewed the answer-key on the basis of the feedback received from the candidates, there is no scope for interference by the Court in exercise of its writ jurisdiction under Article 226 of the Constitution.

14. On a careful consideration of the respective submissions of the learned Counsel for the parties, I am of the opinion that the experts having already given their opinions on the correctness of the key answers, no interference is warranted.

15. The Judgment in *Guru Nanak Dev University (1-supra)*, which related to the admissions into the MBBS/BDS Courses, turned on its own facts, wherein the expert body nominated by the Court found that eight key answers supplied by the University were demonstrably incorrect while seven others were incapable of having a correct answer. On the facts of that case, the Supreme Court intervened and granted some reliefs.

16. In my opinion, the present cases bear no similarity to the case decided by the Supreme Court in *Guru Nanak Dev University (1) supra* and hence the said Judgment will be of no help to the petitioners.

17. For the above mentioned reasons, the Writ Petitions fail and they are accordingly dismissed. As a sequel to the dismissal of the Writ Petitions, WPMP Nos. 23260/2013 and 23576/2013, filed in the respective Writ Petitions for interim reliefs, shall stand disposed of as infructuous.

7 W.P.(C) No. 4323/2013 & CM Nos. 10021-22/2013, dt. 10-7-2013 (Delhi High Court)

8 CWP No. 14946/2013, dt. 13-8-2013 (Punjab and Haryana High Court)