
(2013) 01 GUJ CK 0054
In the Gujarat High Court
Case No : Writ Petition (PIL) No. 273 of 2012

Vidhyarthi Hit Rakshak Samiti

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 01 GUJ CK 0054

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Ramnandan Singh, s No. 1, for the Appellant; P.K. Jani, Government Pleader for the Opponent(s) No. 1, Mr. A.D. Oza, Advocate for the Opponent(s) No. 5 and Mr. K.V. Shelat, Advocate for the Opponent(s) No. 3, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—By way of this writ-application under Article 226 of the Constitution of India, in the nature of a Public Interest Litigation, the petitioner Vidhyarthi Hit Rakshak Samiti, a social organization engaged in protecting the interest of the students, has brought to our notice that the State Education Department has taken a decision to replace the Gujarat Combined Entrance Test (GUJCET) with Joint Entrance Exam (JEE) (Main) of the Central Board of Secondary Education (CBSE) for admission to engineering and pharmacy courses from 2013. According to the petitioner, this abrupt change in the policy is likely to place the students in difficulty as the syllabus of GUJCET is quite different compared to that of JEE (Main), as a result of which, the students will not be able to cope up with the pressure of the new syllabus with which they will have to be prepared for the JEE (Main) exam.

2. The case made out by the petitioner in this petition may be summarised as under:

The students who were studying in 12th Standard (Science Stream) and desirous

of taking admission in B.E./B.Tech. Degree Course after passing 12th Standard examination had to appear in GUJCET exam, which was introduced by the Gujarat Secondary and Higher Secondary Education Board. The admission in B.E./B.Tech. Degree Course was based on marks obtained in 12th Standard as well as in GUJCET exam in the ratio of 60:40 respectively. The said entrance test was conducted by the Board upto April 2012. In the month of September 2012, the State of Gujarat decided to replace GUJCET exam with JEE (Main), which is based on the pattern of CBSE syllabus.

3. According to the petitioner, the students studying in Gujarati medium are facing lot of problems in procuring materials of JEE (Main) exam as the syllabus of 11th and 12th Standard is not sufficient for JEE exam. The syllabus of 11th and 12th Standard of CBSE covers the entire syllabus of JEE (Main) exam, whereas the syllabus of 11th and 12th Standard as fixed by the Gujarat Secondary and Higher Secondary Education Board does not cover the syllabus of JEE (Main) exam.

4. There are 65 chapters in JEE exam, out of which, 21 chapters pertain to the subject of Physics, 28 chapters pertain to the subject of Chemistry and 16 chapters pertain to the subject of Mathematics, whereas several other chapters which are prescribed in the JEE (Main) syllabus are not covered in the syllabus of 11th and 12th Standard (Science Stream) as fixed by the Gujarat Secondary and Higher Secondary Education Board.

5. According to the petitioner, the State of Gujarat regulates primary and secondary education under the provisions of the Bombay Primary Education Act, 1947, the Gujarat Secondary Act, 1972 and the Bombay Secondary School Certificate Examinations Act, 1948. The secondary and higher secondary schools are recognized by the Gujarat Secondary and Higher Secondary Education Board (GSHSEB). The medium of instruction for the students of GSHSEB is Gujarati, English, Hindi, Sindhi, Urdu and Marathi according to the regulation of the schools. The examination of 12th Standard is conducted by the GSHSEB in the month of March every year and the GUJCET was being conducted under the provisions of the Gujarat Act in the month of April every year. Both the exams are conducted in Gujarati, Hindi, English, Sindhi, Urdu and Marathi medium or in any other medium in which the students are registered.

6. Earlier, for admission in engineering course, 60% marks were calculated from the four semesters of 11th and 12th Standard exam and 40% marks were calculated from the total marks secured in GUJCET exam. The main thrust was always on the syllabus of 11th and 12th Standard prescribed by the GSHSEB. The GUJCET syllabus was also based on the syllabus of 11th and 12th Standard prescribed by the GSHSEB.

7. According to the petitioner, in the month of August 2012 one news item was published, stating that the Education Board of the Gujarat Government had abolished the GUJCET Common Entrance Test and, instead of that, it had

accepted JEE (Main) exam which would be held by the CBSE. The press release of 7th September 2012 also disclosed that the Common Entrance Test was introduced throughout the country.

8. According to the petitioner, no information was provided on the Gujarat Secondary & Higher Secondary Education Board's website regarding cancellation of GUJCET Entrance Test. Just around 15 days before the filing of the petition, the official website of GSHSEB published that now instead of GUJCET, the students will have to qualify for JEE (Main) exam so as to secure admission into B.E./B.Tech. Degree Courses in the State of Gujarat.

9. The allocation of marks has now been fixed in the ratio of 50:50, that is to say, 50% of marks would be calculated from the total marks obtained in all the four semesters of 11th and 12th Standard examination, whereas 50% of marks would be calculated from the marks secured in JEE (Main) examination and the merit list would be prepared accordingly for admission to the engineering courses.

10. Thus, according to the petitioner, this abrupt change in the policy would result into great hardship to the students and the students do not have sufficient time so as to adopt and prepare themselves for the syllabus of JEE (Main) exam.

11. In the aforesaid background, the petitioner has prayed for the following reliefs:

(A) Your Lordships may be pleased to admit and allow this Writ Petition;

(B) Your Lordships may be pleased to issue a writ of mandamus or in the nature of mandamus or any other appropriate writ, order or direction, for quashing the communication issued by respondent no. 5 to all the Principals of Higher Secondary Schools (Science Stream) in the month of November 2012 whereby the Principals have been informed that JEE (Main) Examination has been introduced instead of GUJCET examination from April 2013 and further be pleased to direct respondent nos. 1 and 5 not to hold JEE (Main) Examination 2013 for students who are pursuing their studies in 12th Standard (Science Stream) (Maths, Physics, Chemistry) in the State of Gujarat and are going to seek admission in B.E./B.Tech. Engineering Degree Courses in the facts and circumstances of the present case.

(C) Pending admission, hearing and final disposal of this Writ Petition, Your Lordships may be pleased to direct the respondent nos. 1 and 5 not to compel the students of 12th Standard (Science Stream) whose final examinations are scheduled to be held in March 2013 to appear in JEE (Main) Examination 2013 for admission in B.E./B.Tech. Degree Courses and be pleased to allow the students to undertake GUJCET examination which has been continued for several years in the State of Gujarat for admission in B.E./B.Tech. Degree Course.

(D) Your Lordships may be pleased to pass ex-parte ad-interim relief in terms of prayer (C).

(E) Alternatively, Your Lordships may be pleased to pass such order or further order/s as deemed fit, just and proper by this Hon"ble Court.

I. Stance of Respondent No. 1 - State of Gujarat:

12. According to the State respondent, every student of engineering in the State of Gujarat, after clearing 12th Standard examination, had to appear in the entrance examination, i.e., GUJCET, for admission in the State level institutions. Thereafter, the students had to again give another examination of IIT-JEE as an entrance exam for admission to NTs, AIEEE for admission into Centrally Funded Technical Institutes (CFTI) like NITs and IIITs (Indian Institute of Information Technology) as well as to seek admission in some leading universities of the State like Nirma University, PDPU, Dhirubhai Ambani Institute at Gandhinagar, etc. The GUJCET was mandatory for Gujarat based engineering colleges including Government and Self-Finance Institutes. According to the State respondent, the students had to appear in all three exams after passing 12th Standard examination just to be qualified for getting admission in any engineering college.

13. For the first time in February 2010, a proposal for Common Engineering Entrance Examination as a common system for common admission into professional institutions in the country was made by the Ministry of Human Resource Development. It was meant as a replacement for the multitude of existing exams and more particularly the Indian Institute of Technology Joint Entrance Examination (IIT-JEE) and the All India Engineering Entrance Examination (AIEEE). The first-year version of the exam was planned to cover admission to Centrally Funded Institutions including the Indian Institutes of Technology, National Institutes of Technology, Indian Institutes of Information Technology, Indian Institutes of Science Education and Research and few other universities.

14. According to the decision of the Ministry dated 20th May 2012, the exam is to be introduced from 2013. The State of Gujarat readily accepted the proposal of the Ministry and thereafter had announced that there would not be any Gujarat Common Entrance Test and the same will be substituted by only one Common Entrance Test, i.e., JEE (Main).

15. According to the State respondent, this policy decision is very much in the interest of the students at large, as from now onwards they will not have to prepare for three exams, as they had to do earlier in point of time, but only prepare for one main exam which will open their avenues to study at the institutions of their choice. This decision, according to the State respondent, would not only reduce the burden of the students but will also reduce the financial burden of their parents who had to invest for three different exams, tuitions, reference books, etc. This new policy would also take care of the possible clash in the dates of exams which the students used to experience and thereby anxiously wait for the announcement of the next date of exam.

16. On the basis of the said proposal, the Ministry of Human Resource

Development, New Delhi, issued a Notification dated 14th August 2012 for JEE (Main) replacing the earlier exam of AIEEE.

17. After the notification of the Central Government, a press note was also published by the State Government dated 29th August 2012 in this regard. According to the State respondent, the grievance of the petitioner that the announcement about the change in the policy came at a very late stage is, thus, not well-founded. According to the State respondent, the same was announced way back in the month of August 2012 and not in the month of November 2012, as asserted by the petitioner.

18. According to the State respondent, its policy in so far as admitting the students in the State-managed Technical Institutes and other Self-finance Institutes is concerned, remains unaltered. For the year 2012, more than 10,000 seats remained vacant in engineering colleges and around 4,000+ seats in pharmacy colleges. Thus, a student from Gujarat is not likely to be affected in any manner. To put it in other words, according to the State respondent, the fear in the mind of the students that the seats would be secured by the students of other States is not well-founded.

19. The State respondent, anticipating this change well in advance, launched a number of education/examination reforms at secondary as well as higher secondary level. Introduction of the semester system in 11th and 12th Standard of Science Stream was one of them. The semester system is a very proactive system as it keeps the faculty and the students active in academic activities all throughout the year. As single common entrance examination covers syllabus of 11th and 12th Standard, the State of Gujarat decided to enhance the depth of teaching and learning at the school level in both the years by introducing semester system in 11th and 12th Standard as a seamless unit of higher secondary certificate examination. The semester system is in operation since the start of the academic year from June 2011.

20. According to the State respondent, the style and framework of the Board exams under the semester system has also been changed. In the changed system, the question-papers of first and third semester altogether contain Multiple Choice Questions and the second and fourth semester question-papers contain 50% MCQs. This has been done with an idea to make the students familiar with the MCQ type of exams and prepare themselves to effectively take on competitive exams at national level as these type of questions have a greater scope of testing one's higher order thinking skill.

21. The JEE (Main) exams would also be taken in Gujarati language and, therefore, the grievance that the students studying in Gujarati medium would suffer is also not well-founded.

22. One of the prerequisites for joining the Common Entrance Exam is the common syllabus or common core curriculum in the main subjects at higher secondary level. The State of Gujarat has also taken the initiative and has

replaced the old textbooks of Mathematics, Physics, Chemistry and Biology subjects with the textbooks published on newly introduced core curriculum which is more or less same as the curriculum/syllabus prescribed by NCERT based on NCF, 2005. Such syllabus as contained in the newly introduced textbooks are taught at the higher secondary level under the semester system.

23. According to the State respondent, as the syllabus of JEE (Main) (renamed AIEEE) covers the syllabus of 11th and 12th Standard, the students of Gujarat would have an edge over other aspiring students as they are pursuing 11th and 12th Standard with greater depth.

24. According to the State respondent, the submission of the petitioner that JEE (Main) exam should not be taken from the year 2013 but should have been introduced from 2014 so as to give the students sufficient time to get themselves thoroughly prepared is not well-founded as even if GUJCET would have continued this year, its syllabus would have been revised extensively considering the semester system introduced for 11th and 12th Standard. As the Government has decided to join Common Entrance Examination, the syllabus has not been revised.

25. As on today, there is no GUJCET and it is not possible for the GSHSEB to conduct GUJCET. Further, there is no syllabus of GUJCET so far as the current academic year is concerned. A comparison of syllabus of JEE (Main) and the syllabus of textbooks of GSHSEB has been done by the Board itself. The fear in the mind of the students is baseless. Thus, in the circumstances referred to above, the State of Gujarat has prayed to reject the petition.

II. Stance of the Respondent no. 5 - Gujarat State Secondary and Higher Secondary Board:

26. The stance of the respondent no. 5 Board is more or less the same with that of the State of Gujarat. However, in addition to what the State of Gujarat has stated in its affidavit-in-reply, the respondent no. 5 has explained as regards the syllabus, which is the main focus of the present matter. According to the respondent no. 5, the syllabus of JEE (Main) and the syllabus of the Gujarat Secondary and Higher Secondary Education Board is more or less similar in nature and there is no deviation in the said two syllabus. The Board had sought opinion of expert teachers of various faculties with regard to the comparison of syllabus of JEE (Main) 2013 and the syllabus of the GSHSEB and also the syllabus of CBSE/NCERT, and it has been clearly opined by the team of experts that as such there is zero percent deviation from JEE except in the subject of Mathematics where the deviation is nominal to the extent of 1.735%.

27. The Board had also sought the opinion of a well-renowned Mathematician Dr. A.P. Shah, a retired Principal at M.G. Science College, and Mr. J.M. Bhatt, a retired higher secondary teacher, having experience of 29 years of service, and in their opinion, the syllabus of the Gujarat Board covers several subjects which are not covered either in CBSE/NCERT or in JEE. Similarly, expert opinion was sought for from teachers of the subjects of Physics and Chemistry and the opinion has

been that there is almost no deviation in the syllabus of the Gujarat Board as compared to CBSE/NCERT as well as JEE (Main).

28. According to the respondent no. 5 Board, the syllabus of JEE (Main) is almost at par with the syllabus of textbooks of the GSHSEB and the students of Gujarat would not be at a disadvantage as apprehended by the petitioner. Thus, in the circumstances, the respondent no. 5 Board has prayed to reject the writ-application.

III. Submissions of the Petitioner:

29. Mr. Ramnandan Singh, the learned counsel appearing for the petitioner vehemently submitted that the policy decision of the State Government would work detrimental to the interest of the students rather than helping the students in any manner. According to Mr. Singh, there are many books available for GUJCET examination in the language of Gujarati but there are hardly any books available in Gujarati language so far as JEE (Main) exam is concerned. He also submitted that coaching classes for GUJCET examination are available in small towns of the State, whereas coaching classes for JEE (Main) exam in Gujarati language are very few and such facility is available only in big cities of the State. According to Mr. Singh, these are the practical problems which the students are facing as on today and the authorities concerned ought to have taken into consideration these aspects before finalizing the policy.

30. Mr. Singh has invited our attention to some materials, whereby he tried to demonstrate that there was a major difference in the syllabus. According to him, there are many subjects with which the students are not familiar but such subjects are a part of the syllabus of the JEE (Main) exam.

31. Mr. Singh very earnestly submitted that this Court may interfere and grant relief so far as the present year is concerned, thereby suggesting that directions may be issued to the authorities concerned to conduct JEE exam from April 2014 rather than from April 2013.

32. Mr. Singh lastly contended that if the Court is not inclined to interfere with the policy decision of the Government, then in such circumstances, the Court may direct the Government to maintain the ratio of 80:20, i.e. 80% marks should be calculated from the Board examination and 20% marks should be calculated from the JEE examination, rather than maintaining the ratio of 50:50.

IV. Submissions on behalf of the State respondent as well as the respondent No. 5 Board:

33. Mr. P.K. Jani, the learned Government Pleader appearing for the State respondent and Mr. A.D. Oza, the learned counsel appearing for the respondent no. 5 Board, in one voice, submitted that there is no merit in this petition as the decision has been taken after considering all the relevant aspects of the matter, more particularly, the interest of the students at large. They submitted that such decision of introducing the JEE (Main) exam is based on extensive study and

opinion of experts in the field of education. They also submitted that this Court may not interfere in the matters of policy relating to education as it would not be within the domain of the Court under Article 226 of the Constitution of India to look into the wisdom of the policy framed by the Academicians in the field of education.

34. Having heard the learned counsel for the respective parties and having gone through the materials on record, the only question that falls for our consideration is, whether the policy decision of the State Education Department to replace the Gujarat Combined Entrance Test (GUJCET) with Joint Entrance Exam (JEE) (Main) of the Central Board of Secondary Education (CBSE) for admission to engineering and pharmacy courses from 2013 is, in any manner, violative of any constitutional provision or any other provision of law, warranting any interference at the end of this Court.

35. Ordinarily, court would allow litigation in public interest if it is found:

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India or any other legal right and relief is sought for its enforcement;

(ii) That the action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance;

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;

(iv) That such person or group of persons is not a busy body or a meddlesome inter-loper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;

(v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justiciable in such litigation;

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country;

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;

(ix) That the person approaching the Court has come with clean hands, clean

heart and clean objectives;

36. We are quite mindful of the fact that the role of statutory expert bodies on education and the role of Courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the Courts keep their hands off. If any provision of law has to be interpreted, applied or enforced, with reference to or in connection with education, Courts will step in.

37. In *Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others*, , the Supreme Court observed:

Judges must not rush in where even educationists fear to tread... While there is no absolute bar, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies.

38. In *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, the Supreme Court has reiterated:-

... 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 the departments controlling them.

39. Bearing the aforesaid principles in mind, we are of the opinion that we should not interfere with the decision of the State Education Department to replace the GUJCET with JEE. We examined the entire matter considering as to whether the change in the pattern of exam would put the students to difficulty, as all throughout the course of hearing of this petition, it was vociferously submitted that the syllabus has been changed extensively and the students will not be able to withstand the pressure of preparing the subjects, which they have not dealt with in the past. Thus, our entire concentration remained to examine, whether there had been any substantial change in the syllabus all of a sudden, as a result of which, the students would find it difficult to perform well at the JEE (Main) exam.

40. Mr. A.D. Oza, the learned counsel appearing for the respondent no. 5 Board made available to us a comparative chart of the syllabus for JEE (Main) with the topics which are not included in the GSHSEB syllabus. The said chart for all the three subjects i.e. Physics, Chemistry and Mathematics was also supplied to the learned advocate for the petitioner.

41. Having gone through the comparative chart thoroughly, we find that there is no change as such in the syllabus, but on the contrary, the topics which are included in the JEE exam and which were not there in the syllabus of Gujarat are those topics which the students have studied in 11th and 12th Standard. It is, therefore, not correct on the part of the petitioner to say that the students are not conversant with many topics or subjects which are included in the JEE (Main)

exam. Besides the above, assuming for the moment that some of the topics or subjects are not included, as a result of which the performance of the students would get marred, would hardly make any difference so far as seeking admission in engineering colleges is concerned. We have been informed by Mr. Jani, the learned Government Pleader appearing for the State, and Mr. Oza, the learned counsel appearing for the Board, that last year almost 10,000 seats remained vacant in engineering colleges and 4,000+ seats remained vacant in pharmacy colleges.

42. According to the data available from the materials on record, the total number of students who have passed from the Gujarat H.S.C. Board (Science Stream) in July 2011 and March 2012 are 83346 and that from the Central Board of Secondary Education, Council for ISCE, NIOS and IB schools situated in the State of Gujarat are 5050. It has been resolved by the Admission Committee for Professional Courses that the seats allotted to Gujarat Board students would be 94.28% and CBSE, ISCE, NIOS and IB Board students of the schools situated in the State of Gujarat would be 5.713% of the total seats. The seats allotted to CBSE, ISCE, NIOS and IB Board (5.713%) would be further distributed to 88.436% (5.052%) to CBSE students and 11.564% (0.661%) to other (ISCE, NIOS and IB Board) students.

The pro-rata ratio for Gujarat Board is as under:

The pro-rata ratio for other than Gujarat Board is:

The pro-rata ratio between CBSE & ISCE Board is:

43. Most importantly, it has been brought to our notice by Mr. P.K. Jani as well as by Mr. A.D. Oza that by now almost one lac students have enrolled themselves for the JEE (Main) exam. The details as provided to us are as under:

APPLICATIONS FOR ONLINE EXAMINATIONS

44. We are also not impressed by the submission of Mr. Singh, the learned advocate appearing for the petitioner that the State Education Department should have given sufficient notice and time to the students to prepare themselves for the JEE (Main) exam.

45. From the materials available on record, it is evident that the State respondent had released a press note way back on 29th August 2012 regarding the change in the policy and, therefore, it could not be said that the students have been taken by surprise and have not been given sufficient time to prepare themselves for the JEE (Main) exam.

46. We are also not impressed by the last submission of Mr. Singh that the respondents be directed to maintain a ratio of 80:20 for the purpose of allocation of the final marks. The suggestion of Mr. Singh is that 80% marks should be calculated from the result of 12th Standard exam and 20% marks should be calculated from the result of JEE (Main) exam, instead of the ratio of 50:50.

47. We may only say that Courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the Courts start entertaining petitions from students or any other person on their behalf to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, it will lead to chaos in education and deterioration in standards of education. The Courts should not act as appellate authorities examining the correctness, suitability and appropriateness of a policy. Courts should not interfere with the policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.

48. In this context, we may profitably refer to a decision of the Supreme Court in the case of Sanchit Bansal and Another Vs. The Joint Admission Board (JAB) and Others, . The Supreme Court made the following observations in paragraph 28:

28. An action is said to be arbitrary and capricious, where a person, in particular, a person in authority does any action based on individual discretion by ignoring prescribed rules, procedure or law and the action or decision is founded on prejudice or preference rather than reason or fact. To be termed as arbitrary and capricious, the action must be illogical and whimsical, something without any reasonable explanation. When an action or procedure seeks to achieve a specific objective in furtherance of education in a bona fide manner, by adopting a process which is uniform and nondiscriminatory, it cannot be described as arbitrary or capricious or mala fide.

For the foregoing reasons, we do not find any merit in this petition and the same is accordingly rejected. However, in the facts and circumstances of the case, there shall be no order as to costs.