

(1992) 02 DEL CK 0021

In the Delhi High Court

Case No : Civil Writ Petition No. 843 of 1992 and Civil Miscellaneous Appeal No. 1241 of 1992

Vidur Mehta and Vijay Mehta and Another

APPELLANT

Vs

Central Board of Secondary Education and Others

RESPONDENT

Date of Decision : 28-02-1992

Acts Referred:

Citation : (1992) 48 DLT 59

Hon'ble Judges : R.L. Gupta, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Ravinder Sethi, R.K. Saini, Sanjeev Sindwani, Kitty Kumaramangalam, Rajiv Dutta, Nandini Sahni, Anil Kumar, Anita Sahni, S.C. Gupta and S.Gopal, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) This writ petition has been filed by two students appearing for Class Xii Examination in the All India Senior Secondary Examination 1992 being held by respondents 1 and 2 and starting from 3 March, 1992. The challenge is to introduction of the multiple sets of question papers for the students in Delhi only.

(2) The first respondent conducts public examinations at the Secondary and Senior Secondary levels for students in affiliated schools all over the country and even abroad. The petitioners say that for the earlier years there used to be only one set of question papers for students all over the country but this year for the students of the affiliated schools in Delhi the respondents have introduced the use of multiple sets of question papers in the examination halls/rooms.

(3) The petitioners say there is no basis for adopting such a dual system one for Delhi students and the other for students of other States. They say it is discriminatory. The reason for adopting such a system, they say, is to conduct an experiments to curb the evil of mass copying and cheating which has been so stated by the respondents. They say such an evil is not confined to Delhi alone

and is rather rampant in the neighbouring States specially U.P. and Bihar. That the respondents would be using this system was mentioned in the circular dated 25 September, 1991 issued by the second respondent the Controller of Examinations. This circular shows that during 1991 examination the first respondent had to cancel examination at 20 centres for which a re-examination was conducted and that use of unfair means in examination was a very complex problem. It was also mentioned therein that there was definitely a positive correlation in the poor teaching and the use of unfair means. Certain other circumstances were also mentioned as the circumstances leading to the evil of using unfair means in examination. It was then stated that the first respondent had decided to take number of steps to control unfair means and important among those being-

(I) To identify trouble-prone examination centres or schools whose students have a tradition of using unfair means and to make special arrangements both for fixation of centres and conduct of examinations.

(II) To make it obligatory for the head of the school to act as a Centre Superintendent.

(III) To authorise the Centre Superintendents to physically check the students at the entry point so that no material is smuggled into the examination rooms.

(IV) To arrange Flying Squads at the district level under the supervision of Senior Officers of the Directorate of Education, Cbse and other institutions to assist the schools in case of emergencies.

(V) To use multiple sets of question papers in the examination hall- rooms.

(4) Certain other steps were also suggested in the circular to create an awareness about such an evil and means were indicated how to do that. Earlier to this the second respondent Controller of Examinations had also written a letter dated 12 September, 1991 to all the Heads of Institutions in Delhi affiliated to the first respondent preparing candidates for Secondary/Senior Secondary School Examinations to be held in 1992. In this also it was mentioned that in view of several complaints of mass copying at some of the centres in Delhi region the Governing Body of the first respondent had decided to introduce multiple sets of question papers at the same examination centre from 1992 onwards which would mean that in the same examination hall/room different sets of questions papers will be administered to the candidates. It was mentioned that it was hoped that this would minimise the use of unfair means at the centre.

(5) The petitioners contend why such a system should be applied only to Delhi. They have detailed some other reasons as to why such a system now being introduced is bad. They also contend that if the object in introducing such a system is to curb mass copying this would hardly achieve that object and that the only malpractice which could be curbed by such a measure was the copying by one student from the answer book of the other which was not very much

prevalent and could be curbed by other means.

(6) On notice being issued to show cause as to why rule nisi be not issued, the first two respondents have filed their answer to show cause notice as well as reply to the present application which seeks stay of the operation of the decision of the respondents to use multiple sets of question papers for Class Xii in the All India Senior Secondary Examination 1992. We may also note that in another writ petition (C.W.P. 861/92) same very relief is sought in respect of Class X as well. The respondents, however, also reserved their right to file a further affidavit in case this Court issued Rule in the matter.

(7) The respondents say that under the relevant bye laws framed by the first respondent for the conduct of examinations the first respondent can use multiple sets of question papers in the same examination, if considered necessary. They also say it is too late for the petitioners now to come forward and challenge the decision of the respondents when the matter was well known since September last, and they further say they have already taken all the steps for conducting examinations as per the impugned circular and any interim order would disrupt the smooth conduct of the examinations. The respondents also say that under All India Examinations Scheme they conduct All India Secondary Examination and All India Senior Secondary Examination, and that prior to 1991 for All India Secondary and Senior Secondary Examinations three sets of question papers were used by the first respondent for the examinations. These were for three categories of schools (1) those outside India; (2) those outside Delhi; and (3) those in Delhi. The respondents say that they were using different sets of question papers for the three categories of schools for the examinations which were used to be held on the same date. Respondents have also set out the details as to how tedious it is to set the examination papers. They then say that the multiple sets of question papers are also used by the U.P. Board and perhaps by the Board in Bihar, and that the arrangement to use multiple sets of question papers without infringing the criteria for uniform evaluation has become academically acceptable and legally viable. For this they have relied on a report of the Committee dated 30 September, 1991 which consisted of a former Registrar of the University of Delhi and a Professor of Department of Statistics, University of Delhi. A third member, also a Professor, was later added to this Committee.

(8) Respondents then stated that during the examination of 1991 incidents of mass copying were reported at various centres in the Union Territory of Delhi due to which the first respondent laid to cancel examination at 20 centres and that in Delhi region the incidents of malpractice and unfair means were extremely high. It was stated that in other regions such incidents of malpractice/ unfair means as compared to Delhi were extremely low. Then the respondents say that before deciding upon the system of introducing multiple sets of question papers certain Seminar was held and also various discussions took place and only then decision taken. They repudiated various contentions raised by the petitioners challenging

this new system.

(9) We have heard the learned Counsel in considerable detail and have also perused the record as it presently exists. In our opinion the decision to use multiple sets of question papers in the same examination in the circumstances stated by the respondents has been taken rather in haste, in mid session and without proper consideration of the effects of the new scheme with particular reference to its impact on the students. We find there has been no proper study, no research done, no students ever queried, and no parent consulted before implementing the new scheme of examination. Respondents themselves admit it is an innovation used for the first time in the Board Examination of X and XII classes. They say they are introducing this scheme as an experimental measure but then experiment at what costs. Are the careers of the students numbering over lakhs who are just at the threshold of their careers in their lives to be experimented with this way? Are they not being subjected to uncertainties of the examination system as is prevalent. Respondents here got a report of mass copying at 20 centres out of about 600 such centres where the examination was held in the year 1991. The mass copying at times consisted of smuggling out the question paper from the examination centre and with the help of xerox machines etc. smuggling in answers to the question papers. The report of the expert committee on which the respondents rely is dated 30 September 1991 and the impugned circulars are of 12 September 1991 and 25 September 1991. The report of the committee was, thus, not available while the decision had already been taken. To get over this, the respondents rely on the recommendations of a seminar held on 28 August 1991 on the subject "Disinfecting Examinations (Short and Long-Term Measures for Preventing the Use of Unfair Means)". Foreword to this report/brochure was written by the then Chairman, C.B.S.E., in October 1991. This was based on the discussions in the Seminar and report of the Committee abovementioned. This brochure is again of a later date than the impugned circulars. Then the contention of the respondents has been that the recommendations of the Seminar were available on 28 August 1991 itself on which date it was held. It is stated that 32 educationists including Principals participated in the Seminar where papers were also read and conclusions arrived at. Nothing further was done and no investigation made. As noted above, students who were going to be directly affected and also their parents for not considered necessary to be consulted and their suggestions obtained. No doubt, first respondent is empowered to conduct examinations but in the exercise of that power it has to act reasonably, in good faith and on correct grounds. In other words, when the first respondent used its discretion in introducing a new system of examination papers, that discretion had to be exercised reasonably, fairly and justly. The discretion is not absolute or unfettered. When while exercising its discretion the first respondent ignores a relevant consideration or takes into account an irrelevant consideration, its decision cannot be said to be within the confines of reasonableness. That way it acts arbitrarily and a decision is liable to be set aside. This position in law is well

settled.

(10) The respondents have drawn a picture that mass copying is something like an organized crime. If that be so, can the new system stop the evil. If one question paper can be smuggled out where is the guarantee that four question papers cannot be so smuggled out. The respondents have said that in each examination centre there will be four different sets of question papers all jumbled up and no student or even the invigilator would know which of the four papers a student is getting till he actually gets it. The petitioners contend that in our system of examination all students are to be judged by a common yardstick to see their comparative merit. This is so particularly in these days of hard competition. Level of intelligence has to be decided on the basis of a set pattern which would mean a single set of paper when each one of students answers that paper according to his preparedness, ability and capability. The examiner then gives marks, may be ranging from 10% per to 90 %. In this way test is same for every student and he is treated equally. In the new system now introduced one student is being tested vis-a-vis three other students having different set of question papers. Petitioners have also contended that there is every possibility of discontentment and even frustration among the students when one student finds that the question paper of the other student was simple or easy. They further say for getting admission in colleges when even a fraction of marks counts the respondents should not have embarked upon the new experiment without considering the whole matter in its proper perspective. There are other ways to curb the evil of mass copying, they contend. The petitioners have strongly criticised the discriminatory policy adopted by the respondents for the students of Delhi vis-a-vis those outside Delhi. If a certain bye law gives power to the respondents in setting paper to use multiple sets of question papers in the same examination, that cannot be confined to any particular region. Petitioners also say that they were never earlier aware till they read the affidavit of the respondents that there were different sets of papers for Delhi and outside Delhi students. They further say that choosing Delhi for conduct of examination using the new system of multiple sets of question papers is per se discriminatory.

(11) Uncertainty is inherent in our system of examination and by adopting the new system a further element of uncertainty is being introduced. Reference was made to cases pending in this Court dealing with admission to LL.B. Course in Delhi University. It so happened that for the year 1991 Delhi University prescribed entrance test for admission to LL.B. Course and it was specified that graduates with 50 % marks and above would be allowed to sit in the entrance examination. Since the results of B.A. Examinations were not out, the students were allowed to take the entrance examination subject to their getting qualifying marks in the B.A. Examinations. When the results of B.A. Examinations were out some of the students got less than 50 % marks but in the merit list of the entrance examination they were much higher in merit than those students who had got 50 % or more marks in B.A. Examinations.

(12) The petitioners, thus, contended that the new system now being introduced was not at all necessary to curb the evil of mass copying. Why not first use the four methods suggested in the impugned circular. Orders can further be obtained to limit the entry of outsiders to the examination halls/ centres up to a particular distance, having more police bandobast, resorting to frisking and strict invigilation.

(13) Respondents have also submitted that only one examiner has set six different papers on the same -subject-one meant for students outside India, the other for students outside Delhi and four for students in Delhi-as per the new system. They say questions would be all from the syllabus prescribed and students are supposed to read whole of their syllabus. As to what question paper out of the set of four a student gets is purely a question of chance as is getting one question paper for all the students is. They say their system is such that all students are treated equally when questions are being asked from the prescribed syllabus. Their further contention is that new system is good for brilliant students as they are the one who suffer the most because of mass copying that that only the dull students are complaining. We do not think that such should be the approach of the respondents. The respondents have also submitted that no student has any right to say as to what questions he should be asked so long as the questions are from the syllabus prescribed and no right of any nature of the students has been infringed. Again we do not think the respondents are quite right in their submissions here. What the respondents have understood is not the contention raised by the petitioners. What the petitioners are saying is that all students be asked same set of questions and they be judged by the same yardstick. A written test is not like a viva voce or a practical examination.

(14) The petitioners have pooh-poohed the stand of the respondents that evil of mass copying is much too rampant in Delhi than any other States. They say it is a trite so say so. They say perhaps the respondents are oblivion to what is obvious. We, however, think that the evil of mass copying is a malady which afflicts whole of the society and is more related to law and order existing at a particular place.

(15) We are, prima fade, inclined to agree with the petitioners that the decision to introduce multiple sets of question papers is arbitrary, unreasonable and it has no rational relationship with the object sought to be achieved. Having held so we would have certainly stopped the respondents from going ahead with the conducts of the examination adopting this new system. There are, however, weighty and, if we may say so, even quite grave considerations which do not warrant such an order at this stage.

(16) There are about 96,000 students appearing for examination for Xii Class and over 1.5 lakhs for X Class in Delhi. Their dates of examination had been announced much earlier. All preparations for the conduct of the examination have been taken. The examination is starting from 3 March 1992, only three days away from today. To hold examination for such a large number of students is a

herculean task. The question papers all ready are lying in sealed packets to be sent into various centres. Examination halls/centers have been booked, all arrangements for conduct of examination made. It is impossible to have the question papers printed all over again in such quantities within these three days period. We are told one question paper consists of eight pages and there are as many as 20 or more subjects for the Xii Class. The question is also the availability of the printer. The respondents cannot just go to any printer. The element of secrecy has to be kept in view. Only very few people can be entrusted with the task and it is not, Therefore, that any number of people can be employed. The more the people the more chances of the paper being leaked out. If we direct the respondents to go back to old system for the conduct of examination it will mean postponement of the examination for a month or so. Postponement will not only be in Delhi but also would be for rest of the country and for the students outside India as well. The schools have also made arrangements for conducting examination of other classes keeping in view the Board Examinations. Then the students have also to appear in further competitive examinations. Students must have prepared themselves by now for these examinations and any postponement of examination may perhaps not be in their own interest. The petitioners have come to us too late in the day. We know earlier also writ petition was filed questioning the new system of examination which was dismissed by us on 21 January, 1992 without even issuing notice to the respondents. The points now raised were not fully agitated at that time and the petitioner there also did not file any further appeal to the Supreme Court. We have since recalled that order.

(17) In the circumstances, Therefore, let the respondents go ahead with their experiment and we only hope they are successful.

(18) Since various questions have been raised in the writ petitions, we issue Rule D.B., but would dismiss the applications seeking interim relief.