

(1997) 07 AHC CK 0179

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 28846 of 1996

Vivek Kumar Singh

APPELLANT

Vs

The Banaras Hindu University and Others

RESPONDENT

Date of Decision : 21-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1998 All 218 : (1997) AWC 1813

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : Mahesh Gautam and Vijay Gautam, for the Appellant; V.K. Upadhya, for the Respondent

Final Decision : Allowed

Judgement

S.R. Singh, J.—Impervious attitude of the respondents towards the grievance of the petitioner and their obduracy in not looking beyond the Information booklet have dragooned the petitioner to knock at the doors of this Court by means of the instant petition under Article 226 of the Constitution, canvassing the legality and propriety of the impugned action and orders.

2. Chronology of events leading the petitioner to file the present petition is that the petitioner-Vijai Kumar Singh, appeared in the Pre-Medical Test (PMT)/ Pharmacy Admission Test (PAT) 1996, conducted by Banaras Hindu University, Varanasi, for which he was allotted role No. 27239. He took up his test in Amir Uddaula Islamia Degree College, Lalbagh, Lucknow, which was, one of the Centres of the aforesaid examination. The test had for its basis, a single paper begging answer of 200 objective type questions, within a stipulated duration of 3 1/2 hours. The paper comprised in four sections, namely, Physics, Chemistry, Botany and Zoology of 50 objective type questions each. The question booklet No. 27239 that was supplied to the petitioner, missed on sheets containing questions Nos. 29 to 50 in Physics section and questions 146 to 165 in Botany and Zoology sections. The petitioner, it is alleged in the petition, adverted it to

the notice of the Invigilator as well as the Examination Incharge within 10 minutes of the supply of the question booklet that it was littered with bloomers indicated above, but the question booklet that was supplied to him, was not replaced by a correct one. The case of the respondent-University is that the defect in the question booklet was pointed out by the petitioner after a lapse of one hour of the commencement of the examination and not within 10 minutes as contemplated in Instruction No. 11.6 of the Information booklet for PMT/PAT-1996 which reads thus :

"The candidate within 10 minutes of the issue of the question booklet will check and ensure that it contains all the pages and no page or question is missing. Thereafter, no second question booklet or answer sheet will be given to the candidate under any circumstances."

3. The petitioner initially invoked the procedures of this Court by filing Writ Petition No. 21382 of 1996, which culminated in being disposed of finally, vide judgment/order dated 9-7-96, embodying directions that the Professor Incharge PMT/PAT Institute of Medical Sciences BHU would delve into the grievances of the petitioner and dispose of his representation dated 4-6-96 within 15 days from the date of receipt of a certified copy of the order along with a copy of the writ petition and communicate the decision to the petitioner immediately after the representation was decided. The representation met the fate of rejection vide order dated 3-8-96, whereafter the instant petition came to be filed for quashing of the said order and for a writ of mandamus commanding the respondents to declare the petitioner as selected in PMT/PAT-1996 and/or quashing the whole PMT/PAT-1996, conducted by the Banaras Hindu University and when the petition came up before the Court on 10-9-96; the counsel appearing for the University raised the contention having a flavour of a preliminary objection that the petitioner had an alternative remedy of appeal to the Vice-Chancellor against the impugned order dated 3rd August, 1996. The Court, by an interim order passed on 10-9-96, provided that in case the petitioner filed an appeal against the order dated 3rd August, 1996, the Vice-Chancellor would endeavour to dispose it of within 15 days of the receipt of the appeal on merits. The appeal preferred, has since been rejected by order dated 27-9-96 and communicated to the petitioner vide letter dated 3-10-1996, which is also sought to be quashed by incorporating a prayer in that regard vide order dated 1-5-97 passed on the amendment application.

4. I have heard Sri Mahesh Gautam for the petitioner and Sri V.K. Upadhyaya for the respondents. It brooks no dispute that the question booklet that was supplied to the petitioner, missed on questions 25 to 50 in Physics section and question Nos. 146 to 165 in Zoology and Botany Sections of the Booklet. The Only controversy raised was that since the petitioner failed to decipher within 10 minutes of the issue of the question booklet, the defect that it did not contain all the pages or that any of the questions was missing, he was not entitled to a second question booklet vis-a-vis the Clause 11.6 of the relevant Information

booklet pertaining to PMT/PAT-1996. Sri V.K. Upadhayye, appearing for the University, urged that the University had switched over to a new system of computerising the evaluation of answer-scripts and preparation of PMT/PAT examination results and the computer was accordingly programmed in tune with the instructions contained in the booklet pertaining to PMT/PAT-1996 and change of booklet after the stipulated period of 10 minutes would recoil on the working of the University with insidious consequences.

5. Having heard the learned Counsel for the parties and having bestowed my anxious consideration to the submissions advanced across the bar and also having regard to the injustice resulting from the rigid adherence to the prescription of period within which the candidates were to check and ensure that the question booklet supplied, contained all the pages and no page or question was missing, I veer around to the view that the Instruction No. 11.6 of the Information booklet can only be characterised as directory and cannot be regarded as mandatory except on pain of inflicting injustice to students for the mistake or error attributable to the University authorities. The Court is of the considered view that "10 minutes" duration for checking and ensuring the correctness of the question booklet appears to have been prescribed by the respondents as they considered it reasonable for a student to do so within that period.

6. In my opinion, the rule contained in para 11.6 of the Information booklet should be liberally construed in a manner as to scotch the possibility of any injustice being done to the examinee. The observations aforesaid will apply on all fours in relation to Para 11.6 of the booklet as well.

7. Lord Buckmaster in (1917) AC 170 : (AIR 1917 PC 142) stated :-- "All rules of Court are nothing but provisions intended to secure proper administration of justice. It is, therefore, essential that they should be made to serve and be subordinate to that purpose." The Supreme Court in *The State of Gujarat Vs. Ramprakash P. Puri and Others*, , reiterated the position by saying :- "Procedure is the handmaid and not the mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it, like all rules of procedure, this rule demands a construction which would promote this cause."

8. The learned Counsel for the respondents has not been able to demonstrate to the satisfaction of the Court that an answer book supplied to a student after 10 minutes of the commencement of the examination would not be vetted by the computer. A student, who discovers incurable defects in his answer book and claims for its replacement by a correct booklet containing all the questions at belated stage, say after one hour of the start of examination, may be a loser for he may not be able to attempt all the 200 questions if the duration of examination is considerably reduced on the second correct answer sheet being asked for and supplied at a considerably late stage after the commencement of the examination, but the examining body would not lose anything nor will it be faced with any problem in examining the answer book supplied after 10 minutes

of the start of the examination.

9. It is beyond the pale of dispute that upon defect in the question booklet being pointed out by a candidate within 10 minutes as provided in Clause 11.6 of the Instructions, the candidate has to be provided with a correct booklet and the defective one is handed back to the Invigilator. The University in the instant case, ought to have supplied a correct question booklet to the petitioner as a replacement to the defective one, even if the defect was pointed out after one hour as alleged by the respondents. The University cannot make a candidate to suffer by default nor can it project its own fault on the candidate of supplying incorrect question booklet. The petitioner, in my opinion, is entitled to be recompensated by proportionate evaluation vis-a-vis the missing questions delineated in the body of this judgment. In other words the petitioner shall be deemed to have answered correctly the missing questions in the same proportion in which he has answered correctly the questions contained in the answer sheet supplied to him and his merit vis-a-vis other students who appeared in PMT/PAT-1996 shall be determined on the basis of the marks obtained by him as a result of the evaluation of his answer sheet in the aforestated manner and in case the petitioner is found to have secured marks equal to or more than the marks secured by the last candidate in the merit list he shall be admitted to First Year MBBS course or to B. Pharmacy Part I, as the case may be, along with the students of 1997 batch. In case, the petitioner does not qualify, he may be intimated accordingly.

10. In the result, the petition succeeds and is allowed. Impugned orders dated 3-8-96, 27-9-96, communicated vide letter dated 3-10-96 are quashed. The respondents are directed to act in accordance with directions contained in this judgment. The parties shall bear their respective costs.