

Tulika Ram and Another Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Dec-15-1998

Reported in : 1998(4)AWC720

Judge : A.N. Gupta and ;R.P. Nigam, JJ.

Acts : Uttar Pradesh State Universities Act, 1973 - Sections 12 (12) and 28 (5); [Constitution of India](#) - Article 19 (1); Uttar Pradesh Vigilance Establishment Act, 1965

Appeal No. : Writ Petition No. 418 (M/B) of 1998

Appellant : Tulika Ram and Another

Respondent : State of U.P. and Others

Advocate for Def. : C.S.C. and ;P.C. Verma, Adv.

Advocate for Pet/Ap. : D.P. Singh, Adv.

Judgement :

A. N. Gupta and R. P. Nigam, JJ.

1. A Combined Pre-Medical Test for admission to Graduate Medical Courses is held every year in Uttar Pradesh and one or the other University of the State is asked to hold the said test under sub-section (5) of Section 28 of U. P. State

Universities Act. 1973. The Combined Pre-Medical Test in the year, 1997 was assigned to and was managed and held by Kanpur University now known as Sri Sahuji Maharaj Kanpur University, Kanpur. At that time. Dr. S. S. Katiyar was Vice-Chancellor of the said University.

2. In the Combined Pre-Medical Test (C.P.M.T.) the number of seats available in the Government Medical Colleges, were as follows :

1.

M.B.B.S.

.

782 Seats

2.

B.D.S. (Dental)

.

51 Seats

3.

B.H.M.S. (Homeopathy)

.

295 Seats

4.

B.A.M.S. (Ayurveda)

.

430 Seats

5.

B.U.M.S. [Unani)

80 Seats

3. Besides these seats, this test was also held, for 50 free seats and 35 paid seats in M.B.B.S. and 20 free seats and 14 paid seats in B.D.S. In private medical colleges.

4. Combined Pre-Medical Test for the year, 1997 was held on 16/17th May, 1997 and the result was declared on 14.8.1997. The first counselling took place between 1.9.1997 to 10.9.1997 and the second counselling was held between 25.11.1997 to 1.12.1997.

5. C.P.M.T. consists of four papers, i.e.. Botany, Zoology, Physics and Chemistry. Fifth paper consists of Hindi but its marks are not added to determine the merit of the candidate. The pattern of the examination is what is called 'Multiple choice objective type test' wherein a student has to tick the correct answer in the block meant for the purpose out of four alternative answers given in the question papers. Deduction is made for wrong answer. Admission of the candidate is done absolutely on merit arrived at on the basis of marks obtained by him in the C.P.M.T. The reservation is also provided for at the time of admission with which, we are not concerned in this petition.

6. Several complaints were made against the manner in which the said Combined Pre-Medical Test was conducted by Kanpur University. Such complaints included asking and taking of bribe by the Vice-Chancellor for managing the admission of students in the Graduate Medical Courses. manipulation of counselling in the manner that some meritorious candidates could not know about the counselling, admission of less meritorious candidates and style of functioning of the Vice Chancellor according to which he kept to himself most of the work relating to conduct of the test. The Chancellor under the provisions of sub-section (12) of Section 12 of U. P. State Universities Act, 1973, passed an order appointing Sri S.

N. Shukla, the then Principal Secretary. Administrative Reforms Department to conduct an inquiry into the affairs of the University. During the course of enquiry, he came across complaints relating to conduct of Combined Pre-Medical Test, it appears from the documents filed in this writ petition that the Vice Chancellor did not co-operate with the inquiry and did not make the required documents available to him. The Vice-Chancellor filed Writ Petition No. 3453 (M/B) of 1997 in this Court and had made a representation to the Chancellor for the change of the Inquiry Officer. This Court on 30.9.1997 passed an order that if no orders on the representation of the Vice-Chancellor regarding change of the Inquiry Officer had been passed by then by the Chancellor, the same may be passed and till then, the inquiry in question may not proceed. It was further directed that as soon as the orders were passed on the representation of the Vice Chancellor, the Inquiry may proceed as per his directions. The tenure of Dr. S. S. Katiyar. Vice-Chancellor of Kanpur University came to an end on 16.9.1997. The Inquiry Officer submitted his report dated 1.10.1997, to the Chancellor, according to which he came to the conclusion that a large-scale unfair practices and bungling appear to have been done in conducting the Combined Pre-Medical Test. Complaints were received according to which money is said to have played a considerable role in the admission of the students. Counselling was manipulated in the manner that some meritorious candidates could not come to attend it thereby paving the way for the admission of less meritorious candidates. He also observed that evaluation of the answer-books was also not fair. However, considering the vastness and importance of the matter and in view of the fact that the required documents had not been made available to him. the inquiry officer concluded that the matter needed to be inquired into by an independent and impartial agency in the interest of all concerned because several people were involved in the conspiracy and that this should be done so that in future a fair test may be held. The Chancellor by means of his order dated 22.11.1997 dropped the inquiry because in the meantime, the tenure of Dr. Katiyar Vice-Chancellor, Kanpur University had expired and the inquiry had become infructuous. Subsection (12) of Section 12 of the said Act provides that if the Chancellor is of the opinion after making such inquiry as he deems proper that the Vice Chancellor has wilfully omitted or refused to carry out provisions of the Act or abused his powers vested in him or if it

otherwise appears to the Chancellor that the continuance of the Vice-Chancellor is detrimental to the interest of the University, he may remove the Vice-Chancellor. Since the tenure of the Vice-Chancellor had already expired, the question of his removal could not have arisen and, therefore, the Chancellor rightly dropped the inquiry.

7. The matter seems to have rested there. In the meantime, several students including Tulika Ram, petitioner No. 1 preferred several writ petitions in this Court which are pending in which complaints regarding unfair evaluation of answer books, etc. have been made and direction has been sought for admitting those students. In the writ petition filed by the petitioner No. 1, this Court has already passed an order requiring production of his answer-books.

8. When the matter came up before us on 11.2.1998, we thought it fit to order a detailed probe by the Vigilance Establishment of the State Government because Sri S. N. Shukla had not finally drawn conclusions and ultimately Chancellor dropped the inquiry against the Vice Chancellor of Kanpur University. The operative portion of the order passed by us on 11.2.1998 reads as follows :

'We have heard Sri D. P. Singh, learned counsel for the petitioner, Sri Vinod Kumar Singh, standing counsel for the opposite parties and we have given our anxious consideration to the entire matter. It cannot be denied that there are serious complaints of corruption, bungling and manipulation in conducting the Combined Pre-Medical Test of the year, 1997, some of which have been referred to above. In the public interest and to maintain purity of examination system, we deem it fit that this matter may be inquired into through the Vigilance establishment constituted under the U. P. Vigilance Establishment Act, 1965. The vigilance establishment on the basis of the inquiry report of Sri S. N. Shukla dated 1.10.1997 shall register F.I.R. against the concerned persons if it considers that the material is sufficient to do so. If the establishment considers that there is no sufficient material for registering F.I.R. against some persons on the basis of the said report, it will conduct further inquiry into the matter and on that basis, it may register the F.I.Rs. against such persons who are found liable for the same. Since the matter relates to the admission of students in the medical courses, it is

eminently desirable that the Investigation is completed expeditiously. This inquiry shall be conducted by a team of officers headed by an officer not below the rank of Superintendent of Police as may be constituted by the Director of Vigilance Establishment. The personnel of this team shall not be changed except with the prior approval of this Court. Even if they are transferred to some other Sections of the Department, they shall continue to investigate it. The head of the team shall report progress of investigation to this Court.

The Vice Chancellor, Kanpur University and the Registrar, Combined Pre-Medical Test opposite party Nos. 7 and 8. and the Director General, Medical Education and Training, U. P. opposite party No. 6 are directed to preserve the records and not to weed out or destroy the same. The vigilance establishment on receipt of this order shall immediately take those documents in its possession.'

9. The vigilance establishment has submitted its report. That is how this matter has now come up before us. The report is in 3 Volumes which we have gone through. It has been reported that it is not clear as to why Kanpur University was assigned the task of holding Combined Pre-Medical Test for the third time in succession. It has also pointed out that the then Secretary, Medical Education did not call any meeting of the Principals of the Medical Colleges or Vice-Chancellors of the Universities and no meeting took place before Kanpur University was nominated for the third time in succession to hold this test. The vigilance establishment has recommended action against the then Secretary, Medical Education and we hope that the Government will expedite the matter and take appropriate action so that civil servants at this level are not permitted to indulge into such type of arbitrariness. It has also been revealed from this inquiry report that in the results which were published in the newspapers, several roll numbers were missing and some of the students could not participate in the counselling especially in the second counselling. The vigilance establishment has also pointed out that no proceedings of the counselling done from day-to-day, were drawn up and several members of the Counselling Board did not attend the meeting. The Investigating Officers made random checking of answer books both, by manually as well as by the Computer. They could not come across wrong marking. One of the complaints made was that those students who had secured very high marks in

their High School and Intermediate examinations, could not succeed in the Combined Pre-Medical Test and therefore, prima facie it appears that the marking was not fair. The vigilance establishment checked answer-sheets of many such candidates but it could not discover any discrepancy. Apart from what the vigilance establishment has found, it has also been pointed out at the time of hearing that the key-answers were not published and the candidates were deprived from finding out as to whether they have really not succeeded in the Test.

10. This brings us to the question of right of the candidates and their guardians to know in what manner marking has been done and how many marks they have secured. This right of Information or transparency in the conduct of examinations is a valuable right which has to be recognised and implemented. It flows from the fundamental right of freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution. In fact, till about a few years back, the key-answers were being published but this practice has now been stopped. The Supreme Court in the case of Kanpur University and other v. Samir Gupta and others, AIR 1983 SC 1230, has appreciated the practice of publishing the key-answers. That was a case of Combined Pre-Medical Test which was managed in that year by Kanpur University. We appreciate that the present State Government by means of its Government Order dated 11th December, 1997, has taken steps towards transparency in the recruitment of Class III (Clerical) employees and there is no reason why such a transparency cannot be observed in the case of Combined Pre-Medical Test.

11. The Supreme Court in the case of S. P. Gupta v. Union of India and another (Judge's Case), 1981 (Supp.) SCC 87, has held the right to know or the right of Information and transparency in public administration in a democratic set up in Paragraphs 64, 65 and 66, as follows :

'64. Now it is obvious from the Constitution that we have adopted a democratic form of Government. Where a society has chosen to accept democracy as its predal faith, it is elementary that the citizens ought to know what their Government is doing. The citizens have a right to decide . by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf

to account for their conduct. No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only if people know how Government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy. 'Knowledge' said James Madison, 'will for ever govern ignorance and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular Government without popular information or the means of obtaining it. Is but a prologue to a force or tragedy or perhaps both'. The citizens right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the Government is increasingly growing in different parts of the world.'

'65. The demand for openness in the government is based principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their rulers and, once the vote is cast, then retiring in passivity and not taking any interest in the Government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means inter alia that people should not only cast intelligent and rational votes but should also exercise sound Judgment on the conduct of the Government and the merits of public policies, so that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of Government-an attitude and habit of mind. But this Important role people can fulfil in a democracy only if it is an open government where there is full access to information in regard to the functioning of the Government.'

'66. There is also..... It has been truly said that an open government is clean Government and a powerful safeguard against political and administrative aberration and inefficiency.'

12. In the case of State of U. P. v. Raj Narain, (1975) 4 SCC 428, the Supreme Court held as follows, so far right to know or Information is concerned :

'In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act. everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business, is not in the Interest of the Public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.'

13. It has to be remembered that this right to know or information or transparency in public administration cannot be stretched too far. It has to be consistent with public requirement and where secrecy is required to be maintained in the Interest of national security and safety. It cannot be exercised. In Union of India. (1977) 4 SCC 306. while approving the principle of openness in the functioning of the Government warned that this right to know or information cannot be pressed in service beyond reasonable limit. The observations of Supreme Court in this regard are as follows :

'What then is the test? To ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society. Sunlight is the best disinfectant. But it is equally important to be alive to the dangers that lie ahead. It is Important to realise that undue popular pressure brought to bear on decision makers in Government can have frightening side effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision-maker who may find it safer not to take any decision. It will paralyse the entire system and bring it to a grinding halt. So we

have two conflicting situations almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest.'

14. It follows from the above discussion that while secrecy of the Test has to be maintained, a system has to be evolved under which manipulations in the examination are avoided. Consistent with this view and in order to maintain fairness and purity in examination system, we issue the following directions which shall be followed and complied with while holding Combined Pre-Medical Tests in future :

(1) The Chancellor shall nominate the University which shall conduct the Combined Pre-Medical Test. For this purpose, the Chancellor shall constitute a Committee which shall consist of six members which shall include the Principal Secretary, Medical Department, the Director General of Medical Education, 2 Vice-Chancellors and 2 Principals of Medical Colleges. No University shall be assigned this task for more than a year consecutively because if the University is assigned this task consecutively for more than a year, the people connected with this Test are able to acquire the knowledge to manipulate the matters.

(2) At the time of declaration of results of the Combined Pre-Medical Test, the key-answers shall also be published. At the time of setting of papers, the key-answers shall be prepared and kept a secret. In order to obviate the difficulties which arose in the case of Kanpur University and others v. Samir Gupta and others (supra), on account of ambiguity in questions where some questions had more than one correct answer, moderation of key-answers may also be undertaken. If moderation is undertaken, the key-answers shall be final and the candidates will not be able to challenge the same on the ground that a question had more than one correct answer.

(3) Marks obtained in the Combined Pre-Medical Test shall be sent to all the candidates within two weeks of the publication of the result.

(4) The result shall continue to be published as at present in the newspapers but corrigendum regarding missing roll numbers or wrong roll numbers or wrong marks, etc. shall be issued within a week from the date of its publication. The

result shall be published along with the marks secured by the candidate. The counselling shall be held only after the corrigendum has been published. The date and venue of the first counselling shall be notified in the newspapers and after the first counselling, intimation by registered post, shall be sent to the candidate concerned of the second and subsequent counselling.

(5) The Counselling Board shall consist of Director General, Medical Education and Training, 3 Principals or Professors and the Registrar of the University conducting the examination. The Principals and Professors shall be nominated by the Chancellor. Proceedings of the Counselling Board shall be drawn up at the end of each day which shall be signed by all the members present at the time of counselling. An effort shall be made to nominate such Principals or Professors who are willing to be present at the time of counselling. No retired Principal or Professor shall be nominated on this Board.

(6) The students shall be entitled to get scrutiny of their answer-sheets done for which they shall have to apply within 30 days of the declaration of the result. The scrutiny shall be completed within 45 days and the result shall be communicated to the concerned candidate immediately.

(7) So far answer-sheet is concerned, the cover page has two parts. For the purpose of coding one part is removed. Both the parts shall be signed by the invigilator concerned as against one part which is being signed at present. Both the parts shall bear Code numbers. This direction is being issued so that it may not be possible to Interchange the answer-sheets of one candidate with the other.

(8) A carbon copy of the answer-sheet shall be provided to the candidates in each paper at the time of examination so that the candidate himself is able to evaluate his answer-sheet with the published key-answer. This step will go a long way to maintain transparency in the system. The State Government has rightly taken this step of providing a carbon copy of the answer-sheet to the candidates who are appearing in the clerical examination being conducted at present in Uttar Pradesh.

15. In view of the above, no relief can be granted to the petitioners in this writ petition which stands disposed of in the terms indicated above. We record our

appreciation of the able assistance given to us by Sri. D. P. Singh, Advocate and Sri P. C. Verma, Chief Standing Counsel.

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