

Dr. Rajeev Kumar Vs. Union of India and Ors

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Court : Delhi

Decided On : Apr-08-2015

Judge : G. Rohini

Appellant : Dr. Rajeev Kumar

Respondent : Union of India and Ors

Advocate for Def. : Mr. Sanjay Jain, Mr. Arjun Mitra, Mr. Anand Verma, Ms. Noor Anand, Ms. Meera Bhatia, Mr. Arun Bhardwaj, Mr. Rishi Kapoor, Mr. Anand Varma

Advocate for Pet/Ap. : Mr. Pranav Sachdeva, Ms. Neha Rathi

Judgement :

\$~3 * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) No.2275/2010
DR. RAJEEV KUMAR Through: Petitioner Mr. Pranav Sachdeva & Ms. Neha Rathi, Advs. Versus UNION OF INDIA & ORS Through: Respondents Mr. Sanjay Jain, ASG with Mr. Arjun Mitra, Mr. Anand Verma, Ms. Noor Anand & Ms. Meera Bhatia, Advs. for UOI / IIT. Mr. Arun Bhardwaj, CGSC with Mr. Rishi Kapoor, Adv. for UOI. Mr. Arjun Mitra, Adv. with Prof. Sreekrishnan for IIT Delhi and IIT Bombay. Mr. Anand Varma, Adv. for R-5 / IIT Kharagpur. CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 08.04.2015 1. This petition under Article 226 of the Constitution of India was filed as a Public Interest Litigation (PIL) seeking certain directions for reform in the

Joint Entrance Examination (JEE) conducted every year for admission to the various Indian Institutes of Technology (IITs) and National Institutes of W.P.(C) No.2275/2010 page 1 of 13 Technology (NITs).

2. The petition was entertained; however vide order dated 19 th May, 2010 the interim relief claimed in the petition was declined. The petitioner preferred SLP (C) No.16608/2010 against denial of interim relief, which was dismissed on 25th May, 2010. Thereafter vide order dated 2nd June, 2010, relying on certain observations in the order of the Supreme Court of dismissal of the Special Leave Petition, the writ petition was also dismissed on the ground that the petitioner did not have the locus standi to maintain the same. The petitioner preferred SLP (C) No.23055/2010 against the order of dismissal of the writ petition and which was granted by converting the same into Civil Appeal No.7100/2011 and which was vide order dated 16th August, 2011 of the Supreme Court allowed and the writ petition remanded to this Court for disposal on merits.

3. Thereafter from time to time directions were issued with respect to the JEE. Particular reference in this regard may be made to the orders dated 28th May, 2014, 21st July, 2014, 1st August, 2014, 18th March, 2015 and 25th March, 2015.

4. We had in the order dated 25th March, 2015 supra observed that no W.P.(C) No.2275/2010 page 2 of 13 further adjudication appeared to be necessary in the petition. However on the request of the counsel for the petitioner the matter was adjourned to today.

5. The learned ASG appearing for the Ministry of Human Resource Development, Government of India and the counsels for the IITs, with reference to the prayers in the writ petition, state that with the issuance of the directions from time to time in the orders aforesaid, all the said prayers stand satisfied and nothing further remains to be adjudicated / resolved in the present petition.

6. However the counsel for the petitioner has in Court handed over a four sheet tabulation, and which is taken on record, highlighting seven remaining issues which need to be addressed; at the time of hearing he has not pressed / has given up the issues highlighted at serial no.4&6.

7. Though the counsels for the respondents contend that the issues so highlighted are not borne out from the prayer paragraph of the writ petition but considering the fact that the petition is filed in public interest and has already by resolution of several vital issues addressed in the orders aforesaid from time to time served useful purpose, we, instead of being bound by the W.P.(C) No.2275/2010 page 3 of 13 strict rules of pleadings have heard the counsels on the issues so highlighted.

8. Each of the five aforesaid remaining issues highlighted seeks directions with respect to the two stages of JEE. Stage-I comprises of JEE (Main) and Stage-II comprises of JEE (Advanced). The learned ASG has contended that JEE (Main) is conducted by the Central Board of Secondary Education (CBSE) which is not a party to the present proceedings and is not represented and thus the directions sought with respect to JEE (Main) cannot be issued.

9. The counsel for the petitioner contends that CBSE was notified as an implementing agency for JEE (Main), after the institution of the present petition in the year 2010 and thus remained to be impleaded. He however states that the Director of the CBSE though in a different capacity is before this Court and in any case CBSE, in conducting JEE (Main), acts under the direction of the Ministry of Human Resource Development and thus directions sought with respect to JEE (Main) can also be issued.

10. Alternatively he states that opportunity be given to him to implead CBSE as a party to this petition and to serve notice of the petition on CBSE. W.P.(C) No.2275/2010 page 4 of 13 11. We are, especially after hearing the counsels on the aforesaid five issues, not inclined to allow impleadment of CBSE at this stage. The petitioner ought to have impleaded CBSE immediately after it was nominated as the implementing agency for JEE (Main) as is now claimed. Further, the presence of the Director of the CBSE an autonomous body, before this Court in a different capacity does not permit us to issue directions with respect to JEE (Main) admittedly conducted by the CBSE. We will therefore confine ourselves to the directions sought with respect to JEE (Advanced).

12. The issue no.1 highlighted is that the answer key of JEE (Advanced) is displayed after 15 days of the examination. It is contended that the answer key should be released within 24-72 hours of the examination, so that the students can give their effective feedback by working out the problems with fresh memory.

13. The learned ASG in this regard has explained that the setter of the question paper of JEE (Advanced) also prepares the answer key. The said question paper with answer key, after the examination, is circulated for review by the subject experts in all the seven IITs; the views of the experts W.P.(C) No.2275/2010 page 5 of 13 from all the seven IITs qua the answer key are shared and consultation held and thereafter the final answer key is prepared and displayed and all of which process takes about 15 days and thus the answer key cannot be released within 24-72 hours of the examination.

14. The counsel for the petitioner contends that there is no need to wait till the holding of the examination, for sharing the question paper and the answer key prepared by the setter with the experts and the said process can happen before the examination also.

15. We are unable to agree. Circulation of the question paper and the answer key with the experts from seven IITs, before the examination, would make the question paper known to many more persons, affecting the secrecy / confidentiality thereof.

16. We therefore do not find any merit in the relief claimed by the petitioner on the first issue raised.

17. The second issue raised is aimed at minimizing the errors in the answer key. It is contended that the time of one week, instead of three days, should be given for objecting to the answer key and an independent body of experts should review the objections to the answer keys. W.P.(C) No.2275/2010 page 6 of 13 18. The learned ASG has handed over in Court the schedule of the JEE (Advanced) 2015. The said examination is scheduled to be held on 24th May, 2015; the ORS images and scanned responses are scheduled to be displayed on the online portal from 3rd June, 2015 to 6th June, 2015, the request for review of scanned responses are permitted to be made during the said time; the answer key is scheduled to be

displayed on 8th June, 2015. The time for making objections to the answer key has been provided from 8 th June, 2015 to 11th June, 2015 and the marks allotted to each candidate are to be displayed on 13th June, 2015.

19. The counsel for the petitioner has not been able to give us any justifiable reason for granting a week instead of three days for preferring objections to the answer key. In the absence thereof, it is not for this Court to tinker with the Rules and Regulations of examination drawn up by the experts in the field of education. If they have deemed time of three days to be sufficient, the Court cannot substitute its own opinion for that of the experts.

20. As far as the suggestion, for the objections to the answer key to be reviewed by an independent body of experts, we are of the view that in the W.P.(C) No.2275/2010 page 7 of 13 light what we have been informed, of the answer key prepared by the question setter being examined by the experts from all the seven IITs and the final answer key being prepared only thereafter, there is no need for the objections to the answer key being considered / reviewed by an independent body of experts. We have rather enquired from the counsel for the petitioner as to where the said process is to end - in the event of the independent body of experts differing from the experts of the IIT, whether not the next step would be to seek judicial review thereof. In our view no judicial review of the answer key is ordinarily permissible. The said aspect has been dealt in detail in recent judgments of this Court in Salil Maheshwari Vs. The High Court of Delhi MANU/DE/2085/2014 (DB) and in Manoviraj Singh Vs. University of Delhi (judgment dated 25th September, 2013 in WP(C) No.5074/2013) and need is not felt to elaborate further. Suffice it is to say that the process of examination and selection of the candidates cannot be made an unending exercise which would result in the admissions and the academic session being delayed and which cannot be permitted.

21. The counsel for the petitioner has also vaguely suggested that in the year 2014 none of the objections to the answer key found favour and the W.P.(C) No.2275/2010 page 8 of 13 answer key after correction should be directed to be published.

22. The learned ASG and the counsels for the IITs have informed that if merit is found in any objection to the answer key, the same is corrected and the students evaluated thereon only.

23. We have no reason to apprehend that the exercise undertaken, of inviting objections to the answer key is a make-believe or a futile one; there is no reason to presume so.

24. We therefore do not find any merit in the second issue urged also.

25. Third issue urged is that Optical Mark Reader (OMR) is known to introduce errors while scanning Objective Response Sheets / Optical Response Sheets (ORS) and a sum of Rs.500/- per question is charged for each error pointed out in the ORS of JEE (Advanced). It is suggested that the same be done away for a nominal fee.

26. The learned ASG and the counsels for the IITs have explained that the candidates appearing in JEE (Advanced) are permitted to carry the carbon copy of their scanned copy of ORS and the ORS subsequently is displayed on the online portal; that sometimes owing to the examinees not properly W.P.(C) No.2275/2010 page 9 of 13 shading / colouring the ORS or other like cause, the OMR fails to pick up the same; however opportunity is given to the candidates, if of the view that the OMR has erroneously failed to pick any colouring / shading in the ORS, to file objections thereto, subject to payment of Rs.500/- for each mistake of which correction is sought; if the objection is found to be correct, the said sum of Rs.500/- is refunded. It is yet further explained that of the lacs of students who appear in JEE (Main), only the first 1.50 lacs are eligible to appear in the JEE (Advanced) for admission to approximately 10000 seats in IITs. It is explained that the fee of Rs.500/- for each mistake / error has been found to be reasonable and is also found to be a deterrent against frivolous complaints.

27. We are satisfied with the aforesaid explanation, especially considering the fact that upon the error pointed out being found to be correct, the amount of Rs.500/- is refunded. We do not find any ground to interfere with the decision of the experts in this regard also.

28. The issue highlighted at serial no.4 was given up as aforesaid.

29. The issue urged at serial No.5 is of, the status of vacant and filled-in seats being not published at any time during admission counselling. It is W.P.(C) No.2275/2010 page 10 of 13 stated that if the status of filled-in and vacant seats on day-to-day basis is published, it will facilitate the students.

30. The learned ASG and the counsels for the IITs state that the process of counselling is online and goes on round the clock and is updated from moment to moment and it is not possible till termination of counselling to give status on day-to-day basis.

31. The counsel for the petitioner has not urged this issue further.

32. The issue raised at serial no.6 was also given up as aforesaid.

33. The last issue urged at serial No.7 is for setting up of a task force / expert committee of independent experts to formulate a common examination for admission to IITs / NITs and all other engineering colleges.

34. We have enquired from the counsel for the petitioner whether not a large number of regional engineering colleges are under respective State Universities and enquired as to how they can be brought under a single umbrella.

35. No answer has been forthcoming. W.P.(C) No.2275/2010 page 11 of 13 36. The learned ASG has already explained that as far as admission to IITs and NITs is concerned, a common examination [JEE (Main)]. is held by CBSE and only top of 1.50 lacs students passing the same are eligible to appear for the JEE (Advanced) for admission to IITs and all remaining students on the basis of their said result have the option of admission into NITs.

37. On our enquiry, it is informed that while 1.50 lacs students who appear for JEE (Advanced), after the declaration of the result thereof, also have the option of admission to NITs, the students who have not appeared in JEE (Advanced) do not have the option of admission to IITs even if any seats remain vacant therein.

38. On our further enquiry it has been asked that pursuant to our suggestion in an earlier hearing, for a provision for lateral entry into IITs from NITs, the matter was examined and has not found favour.

39. We are of the view that no interference is called for in the decision so taken by the experts in the field.

40. We therefore do not find any merit in the 7th issue urged either. W.P.(C) No.2275/2010 page 12 of 13 41. No further arguments have been raised.

42. The present writ petition has served its purpose and no further orders are needed therein and is disposed of. CHIEF JUSTICE RAJIV SAHAI ENDLAW, J.

APRIL08 2015 pp.. W.P.(C) No.2275/2010 page 13 of 13

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