

Abhishekh Goel Vs. Ministry of Human Resources Development and anr.

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Court : Delhi

Decided On : Dec-16-2010

Judge : Rajiv Sahai Endlaw, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.P.(C) No.4083/2010 & CM No.8106/2010

Appellant : Abhishekh Goel

Respondent : Ministry of Human Resources Development and anr.

Advocate for Def. : Mr. Sanjay Jain; Mr. Arjun Mitra; Ms. Prabhsahay, Advs.

Advocate for Pet/Ap. : Mr. J.P. Sengh; Mr. Apurb Lal, Advs.

Judgement :

1. The petitioner appeared in the Joint Entrance Examination (JEE) held on 11th April 2010 for admission to various Indian Institutes of Technology (IITs) and in the result declared thereof, secured the All Indian Rank of 3946. Though the petitioner has secured admission but has filed the present petition seeking direction to the respondent no.2 IIT to re-assess the marks of the petitioner. It is the case of the petitioner that though his answers did not tally with the Answer Key prepared by the respondent no.2 IIT but his answers were correct and found correct by several expert teachers consulted by the petitioner. The petition thus points out errors in the Answer Key prepared by the respondent no.2 IIT. The petition also points out errors in the multiple choice given in the question paper. The contention of the

petitioner is that if his answer sheet is so re-assessed, and his answers found to be correct and those given in the Answer Key incorrect or vague, the rank secured by the petitioner will improve substantially entitling the petitioner to a better Institute and a course than the one which he has secured.

2. Notice of the petition was issued. No interim relief of reserving a seat for the petitioner in the discipline of his choice was granted. The respondent no.2 IIT filed a counter affidavit and to which a rejoinder was filed by the petitioner. During the hearing on 29th July, 2010, the senior counsel for the respondent no.2 IIT pointed out that the arguments being urged on behalf of the petitioner did not emanate from the petition though raised in the rejoinder and that the respondent no.2 IIT had had no occasion to respond to the rejoinder. In the circumstances, the respondent no.2 IIT was given an opportunity to file a sur rejoinder to the rejoinder.

3. The counsels for the parties were heard.

4. The senior counsel for the petitioner took pains to demonstrate :

i. even where as per the Answer Key also, two of the options were correct and the petitioner had filled one correct option, he was not given half marks therefor though ought to have been;

ii. where according to the Answer Key two of the options given were correct and the petitioner had filled up the two correct options but had in addition filled up a wrong one also, no marks given for the correct options filled up;

iii. the respondent no.2 IIT had admitted that there were other correct answers also besides that given in the Answer Key.

iv. that the rules of marking were changed in between, reliance is placed on Tamil Nadu Computer Science

B.Ed. Graduate Teachers Welfare Society v. Higher Secondary School Computer Teachers Association (2009) 14 SCC 517 & Hemani Malhotra v. High Court of Delhi (2008) 7 SCC 11 to contend that the same is not permissible.

5. The senior counsel for the respondent no.2 IIT has taken pains to explain the entire procedure of setting up of the question paper, Model answers and the answer key. It is contended that the procedure is designed to avoid human error and bias. It is contended that more than four lacs students who had appeared in the exam have been tested on the same basis. With respect to the contention of the petitioner of other answers than that in the Answer Key also being correct, it is contended that the students of the level of those who were to take the exams were expected to know of only one correct answer though the other correct answer pertained to much higher level of knowledge which the examinees were not expected to have. He has also invited attention to the orders dated 19th May, 2010 and 2nd June, 2010 in W.P.(C) No.2275/2010 dismissing the writ petition challenging the same exam.

6. After having heard the counsels at length, what emerges is that there undoubtedly were some ambiguities and irregularities in the examination and upon reassessment the possibility of the petitioner securing a better rank cannot be ruled out. However so can the said possibility not ruled out with respect to other examinees. The Supreme Court in Chandra Singh v. State of Rajasthan AIR 2003 SC 2889 held that issuance of a writ is a discretionary remedy and that the High Court while exercising its extraordinary jurisdiction under Article 226 of the [Constitution of India](#) may not strike down an illegality although it would be lawful to do so and in a given case, may refuse to extend the benefit of discretionary relief to the applicant. It was so reiterated in ONGC Ltd. v. Sendhabhai Vastram Patel (2005) 5 SCC (454). Similarly, in Taherakhaton v. Salambin Mohammad (1999) 2 SCC 635 even at the time of the dealing with the appeal after grant of special leave, it was held that the Court was not bound to go into the merits and even if entering into the merits and finding an error, was not bound to interfere if the justice of the case on facts does not require interference or if the relief could be moulded in a different fashion. This Court has echoed the same views in Filmistan Exhibitors Ltd. v. N.C.T., thr. Secy. Labour 131 (2006) DLT 648 by holding that even if there is a violation of law, this Court is not bound to exercise discretionary jurisdiction and in Babu Ram Sagar v. Presiding Officer, Labour Court MANU/DE/9235/2006 by refusing to interfere in exercise of discretionary powers inspite of holding the reasons given by the Labour Court to be not convincing.

7. In the present case, the answer sheets of all the examinees have been assessed on the same basis. Even if there were errors/inconsistencies therein, it would be unfair to grant the relief on the basis thereof to the petitioner alone. The Division Bench of this Court and the Apex Court considering the size of the examination have refused to interfere in the same. Similarly if the answer key applied by the respondent no.2 IIT is to be interfered with, there is no reason why it should be interfered with only qua the petitioner and not qua the others. The same would result in the entire academic session being stalled and wasted and now that the academic session is underway for several months, that is not deemed to be a feasible option. Though the senior counsel for the petitioner has argued that the petitioner can be granted the relief of migration to another IIT but as aforesaid, the petitioner alone cannot be benefited from the change; the rules have to be the same for all the examinees. The Supreme Court in *Manish Ujwal v. Maharishi Dayanand Saraswati University* (2005) 13 SCC 744 held that the student community in general, whether has approached the Court or not should not suffer on account of demonstrably incorrect key answers and did not allow admissions already granted to be disturbed.

8. Thus while dismissing the writ petition, it is hoped that the respondent no.2 IIT would in laying down the examination procedure for the next year have due regard to the deficiencies pointed out in this proceeding and ensure that the same are removed in the next examination held. It cannot be lost sight of that it is the career of future generations of this country which is at stake. In *Manish Ujjwal* (supra) it was held that those who prepare the key answers have to be very careful and abundant caution is necessary in these matters in as much as a wrong key answer can result in the merit being made a casualty and a young student at the threshold of career despite of giving correct answer suffers. It was further held that since the Courts are slow in interfering in education matters, it casts a higher responsibility on those preparing the key answer. The Supreme Court warned that if casual approach in providing the key answers is adopted, directions will have to be issued for taking appropriate action indicating disciplinary action against those responsible for a wrong and demonstrably erroneous key answers.

9. I am pained to see that inspite of such observations of the Apex Court, sufficient case does not appears to have been taken in the present case. I find that the Supreme Court earlier also in Kanpur University, Through Vice Chancellor v. Samir Gupta (1983) 4 SCC 309 had directed that in a system of multiple choice objective type test, care must be taken to see that questions having an ambiguous import are not set in the papers; it was held that such an examination leaves no scope for a reasoning or argument and that is why the questions have to be clear and unequivocal. It was further directed that if the attention is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and timely action must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it. As late as in Pankaj Sharma v. State of J&K; (2008) 4 SCC 273, the aforesaid directions were reiterated. The incorrect answer keys continue to pollute the admission process. Unfortunately, no heed appears to have been paid to the said directions of the Court.

10. The respondent no.2 IIT in preparing the answer key/model answer ought not to undermine the level of understanding and intelligence of the examinees and cannot presume that the other correct answer would not be known to the young minds. The respondent no.2 IIT to thus place the deficiencies pointed out in this petition and this judgment before the Committee next concerned with holding of the examination, for guidance. The petition is disposed of. No order as to costs.

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