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REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7774 OF 2023**

Jay Pramod Rikame & Ors ...Petitioners
Versus
The State of Maharashtra through its Principal Secretary & Ors ...Respondents

Mr SB Talekar, i/b Talekar & Associates, for the Petitioner.
Dr Birendra Saraf, Advocate General, with Vaibhav Charalwar,
Sameer Khedekar & Bharti Gerella, for Respondent No.4.
Mr VM Mali, AGP, for State/Respondents Nos. 1 to 3.

**CORAM G.S. Patel &
Neela Gokhale, JJ.**
DATED: 11th July 2023

PC:-

1. There is an Affidavit in Reply and an Affidavit in Rejoinder. Yesterday, we heard the matter fully at the stage of admission.
2. There are 154 Petitioners. The array of parties shows 157, but some names have been repeated.

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3. The grievance of the Petitioners relates to a re-examination done by the 4th Respondent, the Common Entrance Test Cell (“CET Cell”) of the Maharashtra State. The present Common Entrance Test (“CET”) was for admission to the first year of the full-time post-graduate MBA/MMS courses for the academic year 2023–2024. In summary, the case of the Petitioners is that when this test was conducted, in some of the slots or batches, there were found to be technical problems. Further, some of the candidates at the CET examination were found to have got 30 additional minutes. Accordingly, the 4th Respondent announced a re-examination. For those who had got additional time, the re-examination was mandatory. Those who said they had suffered technical impediments had the option of appearing for the re-examination. The Petitioners are amongst those who appeared for the re-examination. As we shall see, there were very many others who also did that re-examination but who have not come to Court. Altogether nearly 1,20,000 students appeared for the initial examination and over 11,000 did the re-examination. After the results were declared, the Petitioners have come to Court saying that the conduct of the re-examination for only a few has put them at a disadvantage and has prejudiced them. Some of the Petitioners had in fact earlier filed a Writ Petition saying there were issues with the first test. That Petition was disposed of as infructuous once the Court was informed that a re-examination was being proposed. Even on this there is a controversy today.

4. The CET Cell issued a notice on 22nd February 2023 to the effect that the Common Entrance Test for admission to the first year of the full-time post-graduate degree in MBA/MMS courses for the

academic year 2023–2024 would be held at a date to be notified. Aspirants could apply. On 4th March 2023, the date for registration and confirmation of application forms was extended. There is, as usual, an information brochure outlining the procedure for admission, the syllabus, and the examination pattern. This brochure, importantly for our purposes, says that the examination would be held online. The Petitioners are among those who filled the online application forms.

5. Altogether, roughly 1,12,209 candidates applied to sit for the examination. For administrative convenience, the CET Cell felt it appropriate to hold the entrance examination in four different slots numbered slots 1 to 4. The Petitioners were among those who were given hall tickets or admit cards with the details of their centres and slot timings. The examinations were held on 25th and 26th March 2023 in different sessions in the morning and in the afternoon.

6. The Petitioners did the test in their respective assigned slots. According to the Petitioners, there were several discrepancies or irregularities in this test. Some candidates got 180 minutes instead of the stipulated 150 minutes. Some centres had inadequate computer facilities. For some candidates there was a delay of nearly the whole day in entering the examination halls. There is an allegation that there were paper leakages as well.

7. On 26th March 2023, complaints were made to some police authorities.

8. On 6th April 2023, 15 persons, all of whom are among the present Petitioners, filed Civil Writ Petition No. 4807 of 2023. A copy of that Writ Petition is annexed to the present proceedings. We find the prayers in that Petition at pages 152 and 153. Prayer clauses (a) and (b) of that Writ Petition read as follows:

“(a) A Writ of Certiorari and any Writ in the nature of Certiorari may kindly be issued to the Respondents, and call for record and proceedings in respect of inquiry sought to be conducted by them in to the various complaints made by the students in respect of CET(MBA/MMS) conducted on 25th March 2023 and 26th March 2023 and after scrutinising the Report, the Respondents be directed to conduct fresh CET (MBA/MMS) examination for the year 2023.

(b) A Writ of Mandamus of Writ in the nature of Mandamus, and or direction to the Respondents to reconduct the CET for MBA/MMS-2023, which was conducted on 25th March 2023 and 26th March 2023 for the State of Maharashtra.”

(Emphasis added)

9. On 5th April 2023, the 4th Respondent CET Cell issued a notice declaring that there would be a re-examination. A copy of this communication is included in the Affidavit in Reply at page 341. This notice says quite clearly that there were indeed some issues. The CET Cell had instituted an enquiry committee to look into all these complaints. Based on that enquiry committee report, the CET Cell had decided to hold the re-examination for two categories: (i) candidates who could not complete the examination due to technical issues within the mandatory examination time and who *wished* to

appear for the re-examination, (i.e., optionally) and (ii) candidates other than those in the PWD category who got an examination time of 180 minutes instead of the mandatory 150 minutes. For these persons, the earlier examination results (of those who got 180 minutes instead 150 minutes) were cancelled. These candidates were compulsorily *required* to appear for the re-examination.

10. On 6th April 2023, the earlier Civil Writ Petition No. 4807 of 2023 was listed on board before us at Sr No 907. Although the order does not record it, we were shown a copy of the CET Cell 5th April 2023 notice. The record reflects that the Petitioners were represented by an advocate. Our order of that date says that since a fresh CET was being conducted, the Petition had become infructuous. We disposed of it accordingly.

11. The CET Cell's notice of 5th April 2023 was widely publicised including by advertisements in several leading newspapers in more than one language.

12. On 13th April 2023, a formal notice of a re-examination was issued by the CET Cell in terms of the 5th April 2023 communication.

13. At page 158 of the Petition is a notice or a document on 'normalisation'. This sets out the manner in which raw marks were to be converted to percentile scores based on the relative performance of those who appeared for the examination. The notice said that the marks obtained would be converted into a scale ranging

from 100 to 0 for each session of examinees. The percentile score was inclusive: it would indicate the percentage of the candidates who had scored equal to or less than, i.e, same or lower raw scores, a particular percentile. Consequently, the highest scorer in each session would be in the 100th percentile. The marks obtained between the highest and lowest scores were to be converted to appropriate percentiles. Percentile scores were to be calculated up to seven decimal places to avoid bunching and to reduce ties, i.e., multiple candidates getting exactly the same percentile score.

14. The re-examination was held on 6th May 2023. It is Mr Talekar's case that the document on normalisation was not issued earlier but only followed thereafter on 2nd June 2023, i.e., after the examination was conducted.

15. The results were declared on 3rd June 2023.

16. It is not in dispute that 77 of the 154 Petitioners appeared in the Slot 5 re-examination and 15 of the 154 were petitioners in the previous Writ Petition.

17. The present Petition was filed on 22nd June 2023 and the reliefs that are now sought are set out in the prayers at pages 49 and 50. Prayers I to V read as follows.

“I. To quash the entire admission process including results of CET for admission to first year of full time post-graduate degree in MBA/MMS Course 2023-2024 conducted by Maharashtra State CET Cell by issuing writ

of certiorari or any other writ, order or direction as the case may be;

II. To direct the Respondent No.4, i.e., the Commissioner, Common Entrance Test Cell, Maharashtra, Mumbai, to hold fresh common entrance test for admission into first year of full time post-graduate degree in MBA/MMS Course 2023-2024 in management (MBA/MMA) in various institutions in Maharashtra for the academic year 2023-2024 by issuing writ of mandamus or any other writ, order or direction as the case may be;

III. To direct the Respondent No.1 to frame rules regulating admissions to First Year of full time post-graduate degree courses in management (MBA/MMS Course) in various institutions in Maharashtra under the Maharashtra Unaided Private Professional Educational Institutions Regulation of Admission and Fees) Act 2015 by issuing writ of mandamus or any other writ, order or direction as the case may be;

IV. To direct the Respondent No. 4, i.e., the Commissioner to publish raw scores, question paper, release answer keys and response sheets of all the candidates appearing for CET Common Entrance Test for admission to First Year of Full time post-graduate degree courses in management (MBA/MMS Course) each year, by issuing writ of mandamus or any other writ order or direction, as the case may be;

V. To direct the Respondent No.4, i.e., the Commissioner, Common Entrance Test Cell, Maharashtra, Mumbai, to publish raw scores, answer keys o response sheets of all the candidates who appears in online CBT (Computer Based Test) Common Entrance Test for admission to First Year of full time post-graduate degree courses in management (MBA/MMS) course for

the academic year 2023-2024, pending hearing and final disposal of this petition”.

(Emphasis added)

18. There can be no doubt that the relief is to scrap or cancel the 2023 first-year post-graduate MBA/MMS Common Entrance Test *in its entirety*, i.e., for all 112,000-plus students, and to conduct it afresh. The other prayer is for a mandamus about how the test should be scored or the test results reckoned.

19. The matter was moved before us for urgent relief. However, the application was not immediately pressed. We directed the the filing of affidavits in reply and rejoinder. The State Government, represented before us by Dr Saraf, learned Advocate General, filed an Affidavit in Reply on 6th July 2023. A Rejoinder followed on 10th July 2023. We heard the matter yesterday although the learned Advocate General had received the Rejoinder only earlier that morning.

20. Before we proceed further, we believe it is necessary to layout a correct understanding of the difference between *marks*, *percentages*, *percentiles/percentile scores*, and *percentile ranks*.

21. Marks are of course the raw marks obtained out of the aggregate, for example 45/100 or 90/100. These are easily converted into percentages. A candidate who scores 90 marks out of 100 has a percentage of 90%. But a percentile is a statistical device of frequency distribution. A percentile or percentile score, often called a centile, is a score below which a given percentage **X** of scores in its

frequency distribution falls. This is known as the exclusive definition. It may also be a score *at or below which* a percentage falls, in which case this is an inclusive definition. Percentile ranks (often expressed in percentage) represent the fraction of scores in the distribution that are less than it, and it is always an exclusive definition. Both percentile scores and percentile ranks are regularly used while reporting test scores, especially in normalised or norm-referenced tests. But percentile ranks and percentile scores are not the same. For a percentile *rank*, first a score is given, and the percentage is computed. Therefore, percentile ranks are necessarily exclusive. If a percentile rank for a specific score is 90%, then this tells us that 90% of the scores were lower. On the other hand, for percentile *scores* (or percentiles), a percentage is given and a corresponding score is then determined which can be either exclusive, or, as in this case, inclusive. An inclusive percentile score indicates a score *at or below which* other scores in the distribution fall. Norm- referencing tests, often referred to as ‘grading on the curve’ or the ‘bell curve’ is therefore a study of the distribution of test scores between the highest and the lowest.

22. This brief explanation, is, we think necessary because of the frame of Mr Talekar’s arguments. He begins by drawing our attention to page 325, which is a copy of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission to the Full Time Professional Post Graduate Technical Courses) Rules 2017 (“**The Technical Courses Rules 2017**”). His emphasis is first on Rule 8 regarding the manner of preparation of the merit list. The Rule says first that all candidates who have submitted an application form are to be assigned a merit number

prepared on the basis of the CET *score* or on the basis of the marks obtained at the qualifying examination or any other criteria as specified in Sub-Rule 3. That sub-rule then speaks of the assignment of a merit number for various courses and this includes the first year engineering and various others including management. The merit list of candidates is to be prepared on the basis of marks *or scores* secured by the candidates in the CET or the marks *or scores* in any other examination by the appropriate authority concerned. Then there is a provision of what is to be done in the case of a tie. There is a reference then to Rule 9 but that relates to the Centralised Admission Process.

23. The submission by Mr Talekar is that raw scores were never declared. The merit list was not based on the raw scores. Only the percentiles according to him were declared. This in his submission violates Rule 8 and in particular Sub-Rule 3. Whatever merit list was prepared, he submits, was based on percentiles or percentile scores and not on raw scores.

24. He also presses the argument that there was no provisional list as contemplated under Rule 9. But this is meant for the CAP rounds as the caption clearly shows and we therefore need not trouble ourselves with this.

25. We do not believe that there is substance to this ground because, as we have just explained, the document on normalisation specified clearly that the percentile scoring method would be used; and Rule 8 clearly speaks of marks *or scores*. There is no reason to

accept the argument that ‘scores’ in Rule 8 excludes percentile scores, or that it means only raw marks.

26. There is no substance to the argument that the Rules have been violated.

27. We note, however, that this ground of challenge is not only very late in the day after the re-examination was taken but is not even taken in the Petition itself.

28. We pause for a moment to explain why a document on normalisation was necessary. In any large examination, there are only two ways to set the papers and to approach the assessment of results. One method is where all candidates, irrespective of the number, do exactly the same examination paper. This is possibly easiest from the point of view of assessment, but it carries with it its own risks. For security reasons, different batches are often given different examination papers. This is by no means uncommon and that is precisely what happened in this case. Slots 1 to 4 all had different examination papers. This necessitates a process of normalisation because as the learned Advocate General readily agrees not all the papers were of the same level of difficulty or the same easiness. Obviously, some weightage had to be given depending on the degree of difficulty assessed. This is the process of ‘normalisation’ that is set out in the document at page 158. A simple parallel will suffice for our purposes. Very often for admissions to colleges, students come from different high school educational streams. Some have done the SSC or State examinations while

others have done ICSE or CBSE or other similar central board examinations. The scoring in these examinations is never the same or on parity. While considering admissions, and this is a practice that has been going on for decades, the admitting authority or institute always gives weightage depending on the examination that the candidate did. A more difficult qualifying examination gets a certain additional weightage: 80% in a difficult paper might correspond to 95% in a relatively easier paper, by way of an example. This is not very different from a handicapping system familiar in many sports. What Mr Talekar suggests is that the document on normalisation should have had some different method of normalisation. This was never quite precisely set out, but we got the impression that the submission was that all papers, irrespective of difficulty level, should have been treated or regarded at parity. This is as good as no normalization. This ought to have been done, he submits, before the examination was conducted.

29. We are unable to understand why this should be so or how this can possibly give a candidate a legally enforceable, let alone a Constitutional, right. No candidate was compelled to appear for the examination. It was for the examining authority or the examination conducting authority to find the most appropriate method of normalising results; and given that there were different papers with differing levels of difficulty, normalisation was undoubtedly essential. Indeed, not having normalisation would have been arbitrary. We do not see how any candidate in an examination has any right to demand that normalisation, when undoubtedly necessary, be either not done at all or be in done in a manner convenient to the candidate. There is nothing shown to us to

indicate that the normalisation method adopted by the CET Cell is unfair. This is especially so when we see that the normalisation process has not been applied selectively to one batch but has been applied across the board to all batches.

30. It is also most certainly not for a candidate at an exam to say that the normalisation, clearly necessary, should be done in a particular manner. If that is not the submission before us and the only case is that it should have been announced earlier, we do not see what possible difference this could make. No prejudice could be said to have been caused to those who appeared for the examination irrespective of when the normalisation was announced. As to the question that the normalisation protocol was published late, Dr Saraf's submission is again correct that the argument is wholly irrelevant unless the procedure is shown to be unfair. As it stands, nobody can make out what is it the Petitioners are suggesting. Given that there are four separate papers of differing levels of difficulty, it can hardly be suggested that they all be treated on parity. Such a suggestion cannot possibly be countenanced. It is in itself a plea for unfairness and a skewed result because those who did the more difficult paper would necessarily score less than those who did the easier paper.

31. Dr Saraf, too, points out that an objection to the method of normalisation could have been taken much earlier.

32. But let us consider the actual numbers. Slot 1 initially had roughly 29,846 candidates. Slot 2 had 28,134. Slot 3 had 27,453. Slot

4 had 26,776. Thus, there were roughly 30,000 candidates in each of the four initial slots. For 18,284 candidates in Slot 1, there was no difficulty. About 11,562 candidates appeared for Slot 5, the re-examination. To be sure, some of those who opted for it on the ground of technical glitches may have been drawn from the other slots as well but that is of little concern to us today.

33. Dr Saraf points out that the percentile scores in Slot 1 and Slot 5 have not been clubbed together. The reason is obvious. A fraction of those who appeared in Slot 1 were also in Slot 5. They had to be treated differently because those students got a second examination or a re-examination. They could not possibly be clubbed with those who had only one opportunity, whether compulsorily or by choice. He points out that the percentile scores have been separately assessed for Slot 5 and separately for the unaffected candidates of Slot 1. The computation given in the Affidavit in Rejoinder does not really carry the matter much further because it seems to proceed on the basis that the relative rankings of Slot 1 will be compared or merged with the relative rankings or percentile scores in Slot 5. That is not the case. As we noted, the percentile scores are a frequency distribution and necessarily the aggregate number of candidates appearing will affect the percentile score number but not necessarily rank, i.e., the merit list.

34. We find Mr Talekar's answer to the 6th April 2023 order and the result of the first Writ Petition to be singularly unpersuasive. He uses unfortunately strong language to describe what the State Government said to the High Court. But the 5th April 2023 notice,

as we have seen, one that received wide publicity, is unambiguous. Mr Talekar's argument that the Petitioners were misled or believed that the *entire* CET was being reconducted and therefore did not press the Petition is a submission that has only to be stated to be rejected. The Advocate for those Petitioners was present on 6th April 2023. It is he who handed us a copy of the fresh notice. That notice of 5th April 2023 clearly says that an examination was being done for Slot 5 for only the two categories described above. Some were compulsorily required to do it and others had the option.

35. The entire stand of the Petitioners appears to us to be singularly unfair. As we noted, 1,12,000 students or more have done the examination. We are asked to hold that the results of the vast majority should be thrown into jeopardy at the instance of 0.12% or less of the total number of aspirants. That too, on an argument that comes only after the results have been declared. In other words, at least for those who opted to do the Slot 5 re-examination, there was an attempt to take a chance at improvement of percentile scores. That not having worked, and after the results were declared, this challenge is now brought before us. Dr Saraf is not far wrong in describing this as an attempt to cancel the entire examination after those who took the Slot 5 re-examination voluntarily, gambled on it and lost.

36. We believe the law on the subject is also firmly against the Petitioners. Courts in India avoid interfering in selection processes in matters of public employment and education. They respect the autonomy and integrity of such processes. These tests and selection

processes require a high degree of expertise and discretion. Courts will not readily substitute their judgment for that of an appropriate authority. Unsuccessful candidates in a selection process have never been permitted to challenge selection criteria at a later stage: see *Manish Kumkar Shahi v State of Bihar*;¹ *Union of India v S Vinodh Kumar*;² *Munindra Kumar v Rajiv Gohil*;³ *Rashmi Mishra v MP Public Service Commission*.⁴

37. This is also true of examinations and the Supreme Court itself had said that when a candidate appears at an examination without objection and subsequently is not successful, a challenge to the process is precluded: *Chandra Prakash Tiwari v Shakuntala Shukla*.⁵

38. In *Tajvir Singh Sodhi & Ors v State of J&K & Ors*,⁶ the Supreme Court said that having taken part in the selection process without any demur or protest, candidates cannot challenge it once they find they are unsuccessful. They cannot ‘approve and reprobate’. Only because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process.

39. Thus, where a candidate has appeared and participated in an examination, he or she cannot turn around to contend that the

1 (2010) 12 SCC 576.

2 (2007) 8 SCC 100.

3 (1991) 3 SCC 368.

4 (2006) 12 SCC 724.

5 (2002) 6 SCC 127 : 2002 (3) SCR 948 :

6 2023 SCC OnLine SC 344.

holding of the examination was unfair or that there was some lacuna in the normalisation or examination process because he or she finds the end result not to his or her liking.

40. Dr Saraf relies on the decision of the Supreme Court in *Ran Vijay Singh & Ors v State of Uttar Pradesh & Ors.*⁷ This related to an examination by the secondary education services selection board. Paragraph 31 of the decision, which is an emphatic statement by the Supreme Court that sympathy and compassion have no role to play in directing or not directing the re-evaluation of answer sheets. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or because they perceive that they have been subjected to some injustice. In paragraph 32, the Supreme Court clearly deprecated any attempt by Courts to interfere with examination results. We quote paragraphs 31 and 32 for emphasis.

“31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse—exclude the suspect or offending question.

7 (2018) 2 SCC 357.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination—whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers”.

(Emphasis added)

41. Let us see the resultant injustice of accepting what the Petitioners commend. Of the 1,12,000 and odd candidates, only 154

come to us. They say the *entire* CET examination should be done again. No thought is spared to the hundreds of thousands of others who did the examination but have no complaint. These Petitioners do not even represent all the candidates who either compulsorily or even optionally sat for the Slot 5 re-examination. Yet we are expected to hold that all these persons should be made to suffer at the instance of these disgruntled 154 Petitioners and that too, without the others being joined or without being afforded the slightest opportunity of being heard in the matter.

42. It is, indeed telling, as Dr Saraf points out that all these complaints about so-called structural failures or systemic deficiencies are brought to light only after the examinations were held and, in the case of the present Petition, after the results are declared.

43. We are wholly unable to see any substance in this Writ Petition. It is rejected.

44. In the facts and circumstances of the case and only because the Petitioners are students, we refrain from making an order of costs.

(Neela Gokhale, J)

(G. S. Patel, J)