

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.7157 of 2015
and
M.P.Nos.1 and 2 of 2015

Dr.A.Aiamperumal
S/o.Asokan

... Petitioner-in-person

vs.

1.The Government of Tamil Nadu
represented by its Secretary,
Department of Health,
Fort St.George,
Chennai - 9.

2.The Secretary,
Selection Committee,
Directorate of Medical Education,
EVR Road, Kilpauk,
Chennai - 10.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondents to produce the copy of the question paper, key answer and answer sheet bearing Roll No.16843 for the PG degree MD/MS/Diploma/6 year M.ch (NS) and MDS courses for the year 2015-2016 entrance examination which was held on 01.03.2015 and permit to challenge the key answers before this Court.

For Petitioner : Dr.A.Aiamperumal,
Party-in-Person

For Respondents: Mr.R.Vijayakumar
Additional Government Pleader

O R D E R

Heard Dr.A.Aiamperumal, Party-in-Person and Mr.R.Vijayakumar, learned Additional Government Pleader and perused the materials placed on record including the instructions given by the respondents and the position note.

2. Petitioner seeks for a direction to produce a copy of the question paper, key answer and answer sheet bearing Roll No.16843 for the PG degree MD/MS/Diploma/6 year M.ch (NS) and MDS courses for the year 2015-2016 entrance examination held on 01.03.2015.

3. Petitioner completed his MBBS degree during 2011 and has registered his name on the rolls of Tamil Nadu Medical Council as a registered medical practitioner. The petitioner applied for selection to Post Graduate course for the academic year 2015-16. He sat for the written examination held on 01.03.2015 and the results were published on 03.03.2015 and the petitioner secured 54.72 marks out of 90. According to the petitioner, he should have been awarded 64.80 marks since he has answered all the questions correctly, yet on account of erroneous valuation, he has been awarded low marks. Therefore, the petitioner approached the authorities to furnish copies of question paper, key answer and answer sheet, so as to enable him to demonstrate that the marks awarded to him was incorrect and also would enable him to challenge the same in the manner known to law. Since the authorities were not inclined to accept his request, the petitioner approached this Court by way of filing this writ petition seeking the aforementioned relief.

4. The petitioner submits that in respect of an identical matter, this Court issued directions in respect of another candidate and the question paper, key answer and answer sheet were furnished and ultimately on a challenge made to marks awarded re-valuation was done and the candidate secured additional three marks and she was admitted to a post-graduate course of her choice. In this regard, reference has been made to the decision of this Court in W.P.No.1002 of 2013 dated 28.04.2014.

5. Learned Additional Government Pleader, on written instructions, submits that as per Clause 32 of the Prospectus, candidates will not be allowed to take back the question booklet and request for provision of photocopies of the question booklet, answer sheet or answer key will not be entertained. Therefore, the request made by the petitioner is not feasible of compliance. Further, it is submitted that the prospectus is a Magna Carta of the selection process, which has been reiterated by several decisions of the Apex Court and the petitioner having accepted the condition in the prospectus, cannot seek for copies of the question paper, key answer and answer sheet.

6. It is seen that such condition in the prospectus has been in vogue for several years and an identical condition was put to challenge during the academic year 2012-13, viz., clause 35 in the prospectus of such year. The candidate filed W.P.No.7041 of 2012 challenging such clause as being illegal and to furnish copies of question paper, key answer and answer script. The writ petition was disposed of by order dated 17.04.2012 directing the respondent

therein to furnish the copy of the answer sheet alone. Therefore, the petitioner therein filed W.A.No.944 of 2012 and the Honourable Division Bench of this Court, by order dated 19.07.2012, allowed the appeal and remitted the matter back to the single Judge to decide the legal questions since Clause 35 of the prospectus was put to challenge and no decision was taken on the said issue. Pursuant thereto, the writ petition was heard by the learned single Judge and by order dated 17.09.2012, the writ petition was allowed following the decision of the Honourable Supreme Court in Institute of Chartered Accountants of India vs. Shaunka H. Satya and others [2012 (1) MLJ 488 SC]. In fact in the said writ petition also, an identical issue has been raised and the defence raised was also identical as that of the present writ petition. In the said writ petition also, the respondents contended that as per the terms and conditions of the prospectus, those records cannot be furnished. The legal issue was considered and held in favour of the petitioner therein. At this stage, it is worthwhile to refer to the operative portion of the said order:

"8. The issue to be decided in this writ petition as to whether Clause 35 containing in the prospectus issued for admission to PG course for the academic year 2012-2013 can prohibit the petitioner from getting the copies of the question paper, key answer and the answer script to the petitioner, who is a candidate appeared with Registration No.90561 in the entrance examination on 4.3.2012 for selection to MDS course.

9. The said issue was already considered by the Supreme Court in the decision reported in (2011) 8 SCC 497 (Central Board of Secondary Education and Another vs. Aditya Bandopadhyay and Others) and in paragraph-36, it is held as follows:-

" 36. Section 22 of the RTI Act provides that the provisions of the said Act will have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore the provisions of the RTI Act will prevail over the provisions of the bye-laws/rules of the examining bodies in regard to examinations. As a result, unless the examining body is able to demonstrate that the answer books fall under the exempted category of information described in clause (e) of Section 8 (1) of the RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer books, even if such inspection or taking copies is barred under the rules/bye-laws of the examining body governing the examinations. Therefore, the decision of this Court in Maharashtra State Board and the subsequent decisions following the same,

will not affect or interfere with the right of the examinee seeking inspection of the answer books or taking certified copies thereof."

10. Again in the decision reported in (2012) 1 MLJ 488 SC (Institute of Chartered Accountants of India vs. Shaunak H. Satya and Others), similar issue was considered and in paragraph-12, it is held thus:-

" 12. Information can be sought under the RTI Act at different stages or different points of time. What is exempted from disclosure at one point of time may cease to be exempted at a later point of time, depending upon the nature of exemption. For example, any information which is exempted from disclosure under Section 8, is liable to be disclosed if the application is made in regard to the occurrence or event which took place or occurred or happened twenty years prior to the date of request, vide Section 8(3) of the RTI Act. In other words, information which was exempted from disclosure, if an application is made within twenty years of the occurrence, may not be exempted if the application is made after twenty years. Similarly, if information relating to the intellectual property, that is the question papers, solutions/model answers and instructions, in regard to any particular examination conducted by the appellant cannot be disclosed before the examination is held, as it would harm the competitive position of innumerable third parties who are taking the said examination. Therefore, it is obvious that the appellant examining body is not liable to give to any citizen any information relating to question papers, solutions/model answers and instructions relating to a particular examination before the date of such examination. But, the position will be different once the examination is held. Disclosure of the question papers, model answers and instructions in regard to any particular examination, would not harm the competitive position of any third party once the examination is held. In fact, the question papers are disclosed to everyone at the time of examination. The appellant voluntarily publishes the "suggested answers" in regard to the question papers in the form of a book for sale every year, after the examination. Therefore, Section 8(1)(d) of the RTI Act does not bar or prohibit the disclosure of question papers, model answers (solutions to questions) and instructions if any

given to the examiners and moderators after the examination and after the evaluation of answerscripts is completed, as at that stage, they will not harm the competitive position of any third party. We therefore reject the contention of the appellant that if an information is exempt at any given point of time, it continues to be exempt for all time to time."

11. Applying the said judgments to the facts of this case, the respondent is not entitled to rely on Clause 35 of the prospectus and deny the disclosure of the questions, key answers and the answer script after the evaluation is over and results are published. The said prohibition will apply only upto the publication of results of the written test.

12. The learned Senior Counsel for the petitioner submits that if any charges are to be paid, the petitioner is willing to pay for getting the copies of the same from the respondent. The said submission made by the learned Senior Counsel for the petitioner is recorded.

13. Following the judgments of the Supreme Court, the writ petition is disposed of with direction to the respondent to furnish the particulars, namely, question paper with answer written by the petitioner and key answers, which were requested by the petitioner by application dated 8.3.2012, within a period of two weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed."

7. It is submitted by the petitioner that after the above referred writ petition was allowed, the candidate was furnished with the copies of question paper, key answer and answer sheet and she once again challenged the same and on re-valuation, it was found that the petitioner therein was entitled to higher marks. The order passed by this Court in W.P.No.1002 of 2013 filed by the petitioner in W.P.No.7041 of 2012 dated 28.04.2014, reads as follows:

"3. In the meanwhile, based on the order of this Court dated 28.3.2013 to verify the correctness of the answers given by the petitioner in respect of 25 questions, the first Committee submitted its report dated 10.4.2013 stating that the answers given by the petitioner for question Nos.38, 59, 74, 242, 191 and 224 were correct. Subsequently, after hearing both sides, since a specific dispute was raised by the learned counsel for the petitioner with regard to the correctness of the key answers given by the petitioner for nine questions based on the answers given in the text books, namely, Q.Nos.28, 39, 41, 114, 199, 231, 84, 33 and 246, this Court, by order dated 18.2.2014, again directed a Committee of three

members to evaluate the nine questions on merits and thereupon to submit a report before this Court. On the basis of the said direction, a report had also been submitted by the second Committee on 14.3.2014 in respect of the above nine questions. A perusal of the report dated 14.3.2014 shows that the petitioner has given the correct answer for question No.28, since all the four options are correct. In respect of question No.39, the Committee has stated that the said question has not been properly structured. Similarly, in respect of question No.199, although the learned counsel for the petitioner argued that the petitioner has given the appropriate answer, but, according to the respondents, she should have given the most appropriate answer by reading thoroughly all the options.

4. Prima facie, this Court is of the considered view that the petitioner is entitled to get marks for the six questions, namely, Q.Nos.38, 59, 74, 242, 191 and 224, on the basis of the report submitted by the first Committee dated 10.4.2013. Subsequently, as per the report submitted by the second Committee dated 14.3.2014, out of the nine questions, for question No.28, all the answers A,B,C,D were found to be correct. Similarly, for question No.199, the petitioner has given the appropriate answer. However, for question No.39, it is seen that the question has not been properly structured. Therefore, placing on record the reports dated 10.4.2013 and 14.3.2014, on the basis of the judgments of the Apex Court in *Kanpur University v. Samir Gupta and others*, (1983) 4 SCC 309, *Gurunanak Dev University v. Saumil Garg and others*, (2005) 13 SCC 749 and in *Pankaj Sharma v. State of Jammu and Kashmir*, (2008) 4 SCC 273, this Court is of the view that the petitioner is entitled to get marks for Q.Nos.38, 59, 74, 242, 191, 224 and for question Nos.28, 39 & 199. On this basis, if 0.36 mark is given for each of these nine questions, it comes to 3.24 marks and when the same is added to the original marks secured by the petitioner, it comes to 67.00 marks. Now the counter affidavit filed by the respondents says that the cut-off mark for admission to the MDS course for the academic year 2012-13 is 69.50. In order to demonstrate that there is no cut-off mark prescribed for the post graduate medical courses, learned counsel for the petitioner has placed on record the information relating to the first phase of tentative counselling schedule for 2012-13 for post graduate degree/diploma/6 year M.Ch (Neurosurgery)/MDS courses to say that there is no cut-off mark prescribed for post graduate medical courses, namely, MDS. Finally, by bringing to the notice of this Court the schedule of counselling for re-allotment for the second phase held on 28.6.2012 and 29.6.2012, the learned counsel

submitted that for MDS courses, one seat in Periodontics for service MBC candidate, one seat in Oral Pathology for service general turn candidate and one seat in Preventive Social and Community Dentistry for open general turn candidate were available for allotment. The petitioner has also filed an affidavit dated 25.4.2014 stating that out of 18 candidates who were admitted for the State quota, Dr.Sathishkumar, BC candidate dropped out and two other seats surrendered from all India quota were also given to the State quota, therefore, the second respondent declared that the above three free seats were available and called the third counselling on 28.6.2012 in the Government college. But the 19th rank holder Dr.R.Muthukumar, BC private candidate and one Dr.S.Kuzhali, 20th rank holder belonging to BC service candidate took two seats out of three. However, 21st to 25th rank holders did not attend the third counselling. As they opted out, the next candidate Dr.C.Rahila, MBC private candidate, who was originally given 26th rank with 66.88 marks, got selected for the third seat available in Preventive and Social Dentistry which was surrendered by Dr.P.Sathishkumar.

5. In view of the above, it must be mentioned that had the petitioner been given correct marks viz., 67 marks at the first instance in the entrance examination, she would have been selected for the last free seat, as she has secured more marks than Dr.C.Rahila who secured only 66.88 marks. Admittedly, when Dr.C.Rahila, MBC private candidate, who was shown in 26th rank with 66.88 marks, got selected for the third free seat in Preventive and Social Dentistry which was surrendered by Dr.P.Sathishkumar, in view of the fact that the petitioner has now secured 67.00 marks, this Court hereby directs the respondents to consider her as an eligible candidate under the free Government quota admission for MDS course for the year 2012-13. However, since the petitioner has successfully passed the first year and is going to join the second year, she is entitled to get the salary and leave for completing the three years course. It is made clear that since she was unable to get the free medical MDS seat for the year 2012-13, the respondents are directed to grant the above mentioned benefits to the petitioner within a period of three weeks from the date of receipt of a copy of this order. With this observation and direction, the writ petition stands disposed of. Consequently, M.P.Nos.1 & 3 of 2013 are closed. No costs."

Pursuant to the above direction, the petitioner therein had secured admission in the Post Graduate degree in the subject of her choice.

The legal issue involved in this writ petition is squarely covered by the decision in W.P.No.7041 of 2012, which has been implemented by the respondent. Accordingly, this Writ Petition is allowed as prayed for. The respondents are directed to furnish photostat copies of the question paper, key answer and answer sheet bearing Roll No.16843 for the postgraduate degree MD/MS/Diploma/6 year M.ch (NS) and MDS courses for the year 2015-2016 entrance examination held on 01.03.2015 to the petitioner by 05.00 p.m. on 23.03.2015. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar
Dated:23.3.15

True Copy

Sub Assistant Registrar

To

- 1.The Secretary,
Government of Tamil Nadu
Department of Health,
Fort St.George,
Chennai - 9.
- 2.The Secretary,
Selection Committee,
Directorate of Medical Education,
EVR Road, Kilpauk,
Chennai - 10.

+1 cc to Government Pleader, SR.15997

+1 cc to Mr.A.Aiam Perumal, Party in Person, Sr15987.

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krd 23.3

W.P.No.7157 of 2015

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