

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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WRIT PETITION No.29143 OF 2015

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Between:

Dr.V.V.Vijaya Lakshmi .. Petitioner

And

Sri Venkateswara Institute of Medical Sciences, Tirupathi, Chittoor District rep. by its
Director-cum-Vice Chancellor and others

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 30-09-2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

1. Whether Reporters of Local newspapers **Yes**
may be allowed to see the Judgment?

2. Whether the copies of judgment may be **Yes**
marked to Law Reporters/Journals

3. Whether Their Lordship wish to
see the fair copy of the Judgment? **Yes**

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

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Sri Venkateswara Institute of Medical Sciences

Tirupathi, Chittoor District

Rep. by its Director-cum-Vice Chancellor, and others

.. Respondents

Counsel for petitioner: Sri V.Jagapathi

Counsel for Respondents : Sri K.Ramamohan Mahdeva

Sri Raviteja Pandri

Sri K.G.Krishna Murthy

Sri D.Prakash Reddy

< Gist:

> Head Note:

? CITATIONS:

1. AIR 1966 SC 1332
2. (1983) 4 SCC 309
3. (2005) 13 SCC 744
4. (2014) 10 SCC 521

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

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WRIT PETITION No.29143 of 2015

ORDER:

The petitioner is a graduate in MBBS from Gandhi Medical College. When the first respondent issued a notification on 18.05.2015 for admission to various Super Specialty Courses (DM/M.Ch) for the academic year 2015-2016, the petitioner applied for admission to M.Ch.Surgical Oncology. There are two seats in M.Ch.Surgical Oncology. The entrance test was conducted by the first respondent through online on 11.07.2015. 100 questions were given in the entrance test. The provisional key was released on 13.07.2015 and the petitioner submitted her objections to answers to question Nos. 6, 41, 65, 75 and 76. The final key was released on 21.07.2015 confirming the answers given in provisional key. She secured 85 marks and was given 4th rank. Respondent Nos.3 and 4 secured 2nd and 3rd ranks respectively. The first counselling was

held on 27.07.2015. Though the first rank holder was provisionally admitted, he did not join. The third respondent herein is the second rank holder and he is entitled for a seat on his own.

Since the petitioner secured 4th rank, she did not attend the first round of counselling but filed W.P.No.27144 of 2015 challenging the candidature of the third respondent herein on local status and the said Writ Petition was withdrawn later on 03.09.2015. This Writ Petition was filed challenging award of marks to question Nos. 6, 41, 65, 75 and 76 in pursuance of entrance test held for M.Ch.Surgical Oncology for the academic year 2015-2016.

It appears that the petitioner came to know that one Dr.Nittala Rigved filed W.P.No.23346 of 2015, wherein this Court, by order dated 07.08.2015, referred the objections raised by Sri Nittala Rigved in the same subject viz., Surgical Oncology to the key published, to experts appointed by NTR University of Health Sciences and they submitted their report. He is also one of the candidates sought admission to Surgical Oncology along with the petitioner in the same institution. After submission of their report, this Court noticed that the objections raised by the said candidate were not correct except in respect of one question and accordingly dismissed the Writ Petition on 20.08.2015. Probably, taking advantage of that report, the earlier Writ Petition viz. W.P.No.27144 of 2015 was withdrawn by the petitioner and filed the present Writ Petition.

This Writ Petition came up for consideration on 09.09.2015. After adjourning the matter from time to time, in order to enable the learned Standing Counsel for the first respondent to file counter affidavit, an order was passed on 22.09.2015 not to fill up one seat in Surgical Oncology in the first respondent University. By that time, the fourth respondent was not served and the third respondent was represented by a counsel. Now, the fourth respondent is also served and is represented by a counsel.

First respondent filed a counter affidavit admitting the facts of the case but disputing the report submitted by the experts pursuant to the order in W.P.No.23346 of 2015, more particularly, with regard to question No.6. In the counter affidavit, the first respondent pointed out that the Writ Petition is not maintainable after 1½ months of publishing final key. It is stated as follows:

“It is respectfully submitted that the claim of the petitioner is not correct. In fact the expert committee constituted by the Dr.NTR University of Health Sciences, Vijayawada with regard to objections raised by the petitioner in W.P.No.23346 of 2015 filed by one Dr.N.Rigved for question No.6, the committee had suggested that both answers B and C are correct for question No.6 but as per our subject expert of the first respondent institution comments, B is the only correct answer for question No.6 in comparison with standard books. The same answer B was given in the final key of the respondent No.1 Institution. As such the petitioner is not entitled for the marks for question No.6 as she has marked C as the answer for question No.6 instead of B. The relevant extracts given by the subject expert of the first respondent Institution to substantiate the correct answer is B is submitted for kind reference of the Hon’ble Court. Moreover it was clearly mentioned in the final key published in SVIMS website that this was the final key and no more queries will be entertained under any circumstances. She has not approached the Hon’ble High Court immediately after publishing the final key and results. As such, there should be a time limit and the candidates going on raising objections even after 1½ month of publishing of final key and results is not justifiable. The Hon’ble Court should consider the fact that the petitioner had never challenged the final key and merit list at the time of publication of key and merit list and thus she had duly accepted the final key and final merit. She has gone to Court only after knowing about the case of Dr.Nitin Rigved in the W.P.No.23346 of 2015. Hence it is not fair on the part of petitioner to claim injustice. If her plea is considered, some other candidate will lose the chance to get admissions into the course. He may again challenge the verdict which may unnecessarily prolong the admission beyond the prescribed time schedule. Such a precedence would encourage more candidates in the future to challenge key in all specialties repeatedly, thereby creating problems to the university to conduct such exams.”

Due to lack of time, the fourth respondent could not file counter affidavit but advanced arguments on the merits as well as on the law applicable to the case.

Learned counsel for the petitioner placed heavy reliance on the expert committee report submitted earlier in respect of question No.6 and submitted that since the petitioner answered ‘C’ as correct answer, she is entitled for a mark for question No.6 and, if that mark was awarded to her, she would get 86 marks and have a chance of getting a seat in the said subject. He further submitted, by placing reliance on the Constitution Bench judgment in **Sheodan Singh v. Daryao Kunwar**, that, when the decision in the earlier Writ Petition was not on merits, it does not operate as *res judicata*.

The first respondent submitted that in view of the dispute raised in the counter affidavit by them with regard to the report submitted by the experts

pursuant to an order of this Court in W.P.No.23346 of 2015, no benefit can be given to the petitioner.

Sri K.G.Krishna Murthy, Learned Senior Counsel appearing for the third respondent, submitted that the seat of the third respondent would not be affected in any manner by the present *lis* as he already got 2nd rank, and the first rank holder did not join the course.

Sri D.Prakash Reddy, Learned Senior Counsel appearing for the fourth respondent submitted that the Writ Petition is liable to be dismissed at the threshold since the petitioner earlier filed W.P.No.27144 of 2015 and withdrew the same unconditionally without seeking any liberty on 03.09.2015. He further submitted that the petitioner, having filed a Writ Petition challenging the candidature of the third respondent, cannot take advantage of the subsequent events and file the present Writ Petition based on the report submitted in some other case. Even otherwise, when two answers are possible for a particular question, this Court should not interfere by giving benefit to candidates who answered by marking one of the answers. He relied on decisions of the Supreme Court in **Kanpur University v. Samir Gupta, Manish Ujwal v. Maharishi Dayanand Saraswati University** and **Chandigarh Administration v. Jasmine Kaur**.

I have given my anxious consideration to the facts of the case and the pleas raised by the fourth respondent, who is going to be affected, if the writ petition is allowed. According to me, though the objections raised by the fourth respondent are formidable in normal circumstances of entertaining cases, but in academic matters, the interest of justice should outweigh the said procedural objections. In a case like this, the arguments of the counsel would be normally sharp and the court's attention should be focused on the point. But justice should shield the parties, without violating law, when the piercing arrows of objections are unleashed. I am compelled to reject the objections raised by the learned counsel for the fourth respondent.

I n **Kanpur University's** case (supra), the Supreme Court was considering the case of the students, who sought admission to the Medical College in the State of Uttar Pradesh. In the said case also the Court was confronted with the same issue as in the instant case to decide the correct

answer when the students pointed out that the answer given in the key was not correct. The Supreme Court came to the conclusion that the answer provided in the key was not correct and in that context observed as follows:

“Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged text-books, which are commonly read by students in U. P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.

Students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the Medical Colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those text-books. Those text-books support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong.”

The Supreme Court accordingly confirmed the direction of the High Court to give three marks for each of the questions correctly ticked by the students and since there was negative marking, they were given one mark for those very questions, as one mark was deducted from their total for each of the questions wrongly answered by them.

In **Manish Ujwal**'s case (supra), the Supreme Court was considering the challenge made by the students for their ranking in the entrance test which was conducted by Maharishi Dayanand Saraswati University for admission to Medical and Dental courses in various colleges in the State of Rajasthan. Their grievance was that the key answers were wrong and it resulted in erroneous ranking. The Supreme Court considered the **Kanpur University**'s case (supra) also and held in paras 9 and 10 as follows:

“In **Kanpur University v. Samir Gupta** ((1983) 4 SCC 309) considering a similar problem, this Court held that there is an assumption about the key answers being correct

and in case of doubt, the Court would unquestionably prefer the key answers. It is for this reason that we have not referred to those key answers in respect whereof there is a doubt as a result of difference of opinion between the experts. Regarding the key answers in respect whereof the matter is beyond the realm of doubt, this Court has held that it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong. There is no dispute about the aforesaid six key answers being demonstrably wrong and this fact has rightly not been questioned by the learned counsel for the University. In this view, students cannot be made to suffer for the fault and negligence of the university.

The High Court has committed a serious illegality in coming to the conclusion that "it cannot be said with certainty that answers to the six questions given in the key answers were erroneous and incorrect". As already noticed, the key answers are palpably and demonstrably erroneous. In that view of the matter, the student community, whether the appellants or intervenors or even those who did not approach the High Court or this Court, cannot be made to suffer on account of errors committed by the University. For the present, we say no more because there is nothing on record as to how this error crept up in giving the erroneous key answers and who was negligent. At the same time, however, it is necessary to note that the University and those who prepare the key answers have to be very careful and abundant caution is necessary in these matters for more than one reason. We mention few of those; first and paramount reason being the welfare of the student as a wrong key answer can result in the merit being made a casualty. One can well understand the predicament of a young student at the threshold of his or her career if despite giving correct answer, the student suffers as a result of wrong and demonstrably erroneous key answers; the second reason is that the courts are slow in interfering in educational matters which, in turn, casts a higher responsibility on the University while preparing the key answers; and thirdly, in cases of doubt, the benefit goes in favour of the University and not in favour of the students. If this attitude of casual approach in providing key answer is adopted by the persons concerned, directions may have to be issued for taking appropriate action, including disciplinary action, against those responsible for wrong and demonstrably erroneous key answers, but we refrain from issuing such directions in the present case."

Accordingly, the Supreme Court directed re-evaluation of all the questions by feeding correct answers.

In **Chandigarh Administration's** case (supra), the Supreme Court after considering the entire case law held that when a candidate does not exercise or pursue his/her rights or legal remedies against his/her non-selection expeditiously and promptly, then the Courts cannot grant any relief to the candidate in the form of securing an admission. (Paragraph No.33.4 of the judgment).

In the present case, the petitioner did not keep quiet. She raised

objections to the provisional key answers immediately after its publication. She tried to improve her ranking by challenging the rank of the 3rd respondent on the ‘local’ issue. When she saw some hope in the report of the experts in the case of Dr.Rigved, she promptly withdrew the challenge against the 3rd respondent and filed the present writ petition. In her hurry, she did not seek leave to file another writ petition and this court does not want to enquire whether the withdrawal of earlier writ petition operates as res judicata as no decision was rendered in the said writ petition. In academic matters, more particularly in the fight for seats in medical colleges, the courts should see whether substantial justice can be done or not without entertaining the technicalities in the process of litigation. A career of a student cannot be marred by the forensic obstructions created by procedural law.

In this case, the first respondent strongly asserted that the answer ‘B’ given in the key is correct answer, whereas the experts appointed by this Court in W.P.No.23346 of 2015 gave report that ‘B’ and ‘C’ are also correct.

The extract of the report is as follows:

ANNEXURE

SVIMS, SUPERSPECIALITY ET-2015

SURGICAL ONCOLOGY

SINo	Question No & Options	Provisional Key answer & reference	Final Key answer & reference	Petitioner answer & Reference	Experts opinion with reference	Final answer by the expert
1	No.6 True about sentinel lymph node biopsy a) Special operating room is required. b) Blue dye is injected. c. contraindicated if axillary lymph node is involved d. It is not done to avoid inadvertent axillary lymph node biopsy.	Ba) Schwartz 9 th edition Page No.258, 8 th edition, page No.275	B1) Principles and practice of Oncology Author – Devita 10 th edition, Chapter 29.2) ACOSOG Z011 Trial journal of Clinical Oncology	B & C Schwartz text book of Surgery (9 th edition) Page No.458	Ref: Schwartz's Principles of Surgery - 10 th edition Page No.545. 9 th edition, page No.458	B & C

In a case of this nature, having two correct answers in respect of a

single question, recently a Division Bench of this Court in W.P.No29032 of 2015 and batch dated 29.09.2015 gave benefit of doubt to the candidates who answered either of the two answers. Since this Court is not competent to examine the correctness of answers except through a medium of experts who opined that 'B' and 'C' are correct answers, benefit should be given to the candidate who came to this Court before the last admission though there are technical hurdles in entertaining the present Writ Petition.

In the circumstances, the first respondent is directed to re-evaluate question No.6 of all the students who appeared for Surgical Oncology course and allow them to participate in the second counselling based on the ranking assigned to them.

The Writ Petition is allowed to the extent indicated above. Miscellaneous petitions, if any, pending in this writ petition shall stand disposed of. No order as to costs.

A. RAMALINGESWARA RAO, J

Date: 30.09.2015

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