

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.17181 of 2015

ORDER:

The grievance in the present writ petition is that the respondents, by way of final key, deleted (7) questions and assigned the ranks accordingly on various grounds, such as, questions being beyond the syllabus and no answers and typographical errors and because of the same, petitioner, who claims correctly answered the said questions, as per the preliminary key, is forced to forego the marks and resultantly lost the chances of securing the seat in the EAMCET Medical stream.

2. Heard Smt.M.Siva Jyothi, learned counsel for the petitioner, learned Government Pleader for Higher Education for Respondents 1, 3 and 4 and Sri C.Sudesh Anand, learned Standing Counsel for Respondent No.2, apart from perusing the material available on record.

3. Petitioner herein appeared for EAMCET 2015-16 examination held on 8.5.2015 and the petitioner was given set 'C' paper. The respondents published a preliminary key on 10.5.2015 and according to the petitioner, as per the preliminary key, she marked 123 questions correctly out of 160. In response to the objections called for, as many as, (77) objections were submitted and the same were referred to Expert Committees and as per the report given by the said Committee, the respondents deleted as many as seven (7) questions i.e., one Zoology question (No.51), two Physics questions (Nos.97 & 120) and four Chemistry questions (Nos.156, 126, 145 & 146) and thereafter published the final key on 21.5.2015. The present dispute is with regard to the said deleted questions at the time of publication of the final key.

4. According to the learned counsel for the petitioner, there is no provision for deletion of questions and the reasons assigned by the respondents for deleting the questions are not tenable and the reason that the questions are beyond the syllabus and no answers, is unsustainable. The learned counsel for the petitioner strenuously contends that in fact by way of a representation, the petitioner brought to the notice of the respondents the said anomalies, but the same proved to be futile. The learned counsel, in support of her submissions and contentions, places reliance on the judgments in the case of **Lavu Narmada v. Convernor, EAMCET-06, JNTU**^[1], **K.Shekar v. V.Indiramma and others**^[2], **Lohia Machines Ltd. and Anr. v. Union of India (UOI)**^[3].

5. On the contrary, reiterating the contents of the counter filed by the 2nd respondent, it is submitted by the learned Standing Counsel that after publication of the preliminary key, as many as (77) objections were raised with regard to subject questions and the respondents appointed a Three Men Expert Committee for each subject and the said Committees after thoroughly and meticulously examining the objections and the relevant material, recommended for deletion of the subject questions by assigning the reasons and accordingly respondents deleted the said questions and published the final key. It is also the submission of the learned Standing Counsel that it is a settled law that the opinion of the experts cannot be disturbed and this Court cannot sit in appeal against the opinion of the experts. The learned Standing Counsel places reliance on **Lavu Narmada v. Convernor, EAMCET-06, JNTU** (1 supra) and **R. Krishan Kumar v. Convenor, EAMCET 1998 JNT University, Hyderabad**^[4].

6. In the above background, now the issue that emerges for

consideration of this Court in the present writ petition is whether the petitioner herein is entitled for any relief from this Court under Article 226 of the Constitution of India?

7. The State Government framed the "A.P. Common Entrance Test for Entry into Engineering, Pharmacy, Agriculture, Medical, Dental and Pharm-D Course Rules, 2011" in exercise of the powers conferred under Sections 3 & 15 of the A.P. Educational Institution (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 and the Government notified the same vide G.O.Ms.No.73 Higher Education (EC.2) Department dated 28.7.2011. According to sub-rule (9) of Rule 9 of the Rules, preparation of key answers through committee consisting of Professors of Universities, Teachers of under Graduate Colleges and Teachers of Intermediate Colleges in consultation with the Chairperson is one of the important and vital functions of the Convener.

8. In the instant case, it is the sum and substance of the contentions of the learned counsel for the petitioner that the action of deletion of the questions is highly illegal, arbitrary, unreasonable and beyond the jurisdiction of the respondents and the said action has no sanction of law.

9. The issue in the present writ petition including the scope of judicial review under Article 226 of the Constitution of India is required to be examined and scrutinized in the light of the principles and parameters laid down by the Hon'ble Apex Court and this Court in various pronouncements.

(1) In *Lavu Narmada v. Convernor, EAMCET-06, JNTU* (1 supra), this Court at paragraphs 9, 14, 16, 17 and 20 held as under:

"9. With reference to the said averments, it is submitted by Shri Ratangapani Reddy, learned Standing Counsel appearing for the respondent that all the questions are within the syllabus notified

and are correctly framed. It is further submitted that as much as more than 89000 students have appeared for the medical stream alone, to test the analytical ability of the examinees, some questions are framed by the setters to analyse the correct answer by elimination process. It is further submitted that in the instruction booklet itself it is stated that the notified syllabus is in tune with the revised syllabus of Intermediate and further syllabus is also designed to indicate the scope of subjects included for EAMCET and the topics mentioned therein are not to be regarded as exhaustive.

14. From the above, it is to be noticed that the course at 10+2 level, which is normally called as Intermediate, is governed by the provisions of various regulations framed under the A.P. Intermediate Education Act, 1971 and the syllabus is prescribed for such a course. The examination for the same is conducted by the Board of Intermediate by notifying the syllabus for publication of textbooks mainly by Telugu Academy. The syllabus is being notified on year to year basis and there was revision of syllabus from the academic year 2003-2004 onwards. Prior to the said academic year, in the syllabus of zoology for Intermediate, the topic of 'Animal Associations' was prescribed by giving the list of parasites. A detailed study was prescribed in the broad subject, namely, 'parasitism'. But, however, it appears, though the topic of 'Animal Associations' is part of the syllabus revised by the Intermediate Board and parasitism is also a topic covered in the revised syllabus, but, however, various characteristics of parasites were not mentioned in detail in the books printed by the Telugu Academy. The principal contention of the learned Counsel for the petitioners with regard to questions 46 and 47 is that the detailed study of parasites, which was prescribed earlier for the Intermediate was not continued in the revised syllabus which is published in Telugu Academy Books and as such, the said questions are outside the syllabus. But the said contention cannot be accepted for the reason that the topic of 'animal associations' is continued in the prescribed syllabus for EAMCET and the topic of 'parasitism' was also mentioned in the syllabi. The word 'syllabus' is such broad that in normal parlance, the same is understood as broad outline of the subject. Of course, 'parasitism' is a vast subject. It would have been appropriate to indicate the required study further also by giving sub-heading to the level of Intermediate standard, but the absence of the same cannot be said that the questions are outside the syllabus so as to seek deletion of the said questions for the valuation of the answer scripts.

16. The EAMCET Committee is the committee constituted under the Andhra Pradesh Common Entrance Test for entry into

Engineering, Architecture, Pharmacy, Agriculture, Medical and Dental Courses Rules, 2004 and it is empowered to prescribe the syllabus. The committee will consist of various experts. Syllabus is notified by the EAMCET Committee, in which body, there are academic experts and the said body is presumed to have academic expertise in prescribing the syllabus. Even after filing of the objections to the draft key published, objections were considered with reference to very same questions. A perusal of the said record discloses that the experts have consciously overruled objections and taken into account said questions for valuation. In that view of the matter, merely because the questions are not in tune with the detailed syllabus, which was earlier notified prior to the revision and published in the textbooks by the Telugu Academy, it cannot be said that the said questions are outside the syllabus, notified by the EAMCET Committee.

17. In the judgment relied on by the learned Counsel for the petitioner in the case of *Convenor, JNTU v. C. Swarnalatha* (supra), a Division Bench of this Court has issued directions for prescribing the syllabus for the EAMCET and textbooks and also further directions are given to frame such questions from the syllabus prescribed. Referring to the scope of interference with the administration of academic bodies, it is further held that the Court cannot refuse to interfere when fair-play and reasonableness are wanting in the actions of the academic bodies also. In *Kanpur University v. Samir Gupta* (supra), Honourable Apex Court examined the situation where paper setter committed an error while indicating the correct answer, and, in such an event, it is stated that the students whose answer is correct should not be deprived of their due entitlement to the award of marks. In the said judgment, it is also held that the key answer should be presumed to be correct.

20. Thus, the syllabus is in tune with the revised syllabus of the Board of Intermediate and is designed for the Intermediate Course and also for equivalent examinations. It is also to be noted that the test is not only confined to the students of Intermediate of Andhra Pradesh, but the students who have passed in equivalent examinations of other States also are eligible to write. Further with regard to pattern of syllabus notified, it is stated that the syllabus is designed to indicate the scope of the subjects and the topics mentioned therein are not to be regarded as exhaustive. In view of the said instructions, though the description of the syllabus was not detailed in tune with the syllabus notified by the Board of Intermediate in its revised syllabus, but the fact remains that question Nos.46 and 47 fall within the syllabus notified, namely, animal associations and parasitism. Even with regard to question No. 61, it is stated that

question as framed will fall in the Functional Anatomy of Rabbit with particular reference to the topic of Central Peripheral Autonomous Nervous System in brief. In view of the said explanation of the respondents and the plea that they are within the purview of the syllabus notified, it is not permissible for this Court to make a roving enquiry in a petition filed under Article [226](#) of the Constitution of India. Having regard to the contentions raised, these are not the cases where either to accept the contention of the learned Counsel as outside syllabus or the questions as framed are not amenable for correct answer from the syllabus notified, detailed publication of which is printed in the textbooks printed by the Telugu Academy. Though by and large the notified syllabus is in tune with the revised syllabus, but, merely because the detailed description of the syllabus is not given in proportion to the standard of Intermediate education and when syllabus was notified and supplied to the petitioner in the instructions booklet at the time of the application itself and the petitioner has not chosen to raise any such objection before the examination was conducted and having subjected herself to examination, it is not open to her now to plead that the questions are outside the syllabus. The concept of Animal Associations and Parasitism and Functional Anatomy of Rabbit and Central Peripheral Autonomous Nervous System are very much notified. As such, the contention, at this stage to plead that the said questions were framed outside the syllabus cannot be accepted.”

(2) In *K.Shekar v. V.Indiramma* (2 supra), the Hon'ble Apex Court at paragraph 21 held as under:

“**21.** We can take judicial notice of the fact that NIMHANS is an institution of repute. It has already been so recognised by this Court in *B.R. Kapoor v. Union of India*¹. It is also true that generally speaking courts have been reluctant to interfere with the running of educational institutions. But there can be “no islands of insubordination to the rule of law”². The actions of educational institutions, however highly reputed, are not immune from judicial scrutiny. Indeed, to preserve the high reputation, there is a greater need to avoid even the semblance of arbitrariness or extraneous considerations colouring the institution’s actions.”

(3) In *Lohia Machines Ltd. and Anr. v. Union of India* (3 supra), the Hon'ble Apex Court at paragraph 13 held as under:

“13 It is undoubtedly true that merely because for a long period of 19 years, the validity of the exclusion of borrowed monies in computing the 'capital employed' was not challenged, that cannot be a ground for negating such challenge if it is otherwise well-founded. It is settled law that acquiescence in an earlier exercise of rule making power which was beyond the jurisdiction of the rule making authority cannot make such exercise of rule making power or a similar exercise of rule making power at a subsequent date, valid. If a rule made by a rule making authority is outside the scope of its power, it is void and it is not at all relevant that its validity has not been questioned for a long period of time : if a rule is void, it remains void whether it has been acquiesced in or not.”

(4) In *R. Krishan Kumar v. Convenor, EAMCET 1998 JNT University, Hyderabad* (5 supra), this Court at paragraphs 7, 8 and 11 held as under:

“7. The Supreme Court in Samir Gupta's case (supra) observed 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 and that the questions have to be clear and unequivocal and that if the attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and timely decision must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it. In *C. Satyendra Kumar v. Govt. of A.P.*, 1996 (3) ALD 1116 (DB) a Division Bench of this Court had occasion to consider the validity of the deletion of 38 questions out of 200 in EAMCET-96. In that case the Division Bench had to consider two alternatives which were suggested: (1) adding one mark each for the above 38 questions to each candidate and (2) ignoring the said 38 questions and valuing the paper for the maximum of 162 questions instead of 200 questions and raising it proportionately to the total marks of 200 and fixing the relative ranks by retaining the minimum cut off marks for eligibility. After considering all the pros and cons, the Court ultimately preferred the second alternative observing that it usually keeps the damage at the minimum and merit, though evencmg (sic) of a serious wrong done by the respondents 1 and 2 shall still receive its due. The Court further observed, "We do not, however, have any serious cause to doubt the deletion of the questions by the Committee of the Experts appointed by the Chairman of the A.P. State Council of Higher Education. The Court can hardly afford to entertain suspicion that the Experts Committee has wrongly assessed the

questions for cancellation. When handicap is common to those who are successful and to those who are unsuccessful, to those who are high in the merit list and to those who are low in the merit list, it is not a cause for finding a serious fault with the conduct of examinations and cancel the same. Some petitions have been filed to direct that the 38 excluded questions should also be included and answers to all 200 questions be taken into consideration. When Experts Committee, however, has found that 38 questions are fit to be cancelled, it is not understandable how one can hold that answers to those 38 questions should also be considered for evaluation of the answer scripts. We have thus no reason to direct the respondents to take such a course for determining the merit of the candidates."

8. In view of the above pronouncements of the apex Court and this Court, I am inclined to take the view that though there is no express provision for deletion in the rules of the examination, such a power to delete any defective questions must be implied and that it is also the bounden duty of the authority conducting the examination to delete such questions. It is seen from the counter-affidavits filed on behalf of the respondents that as per the directions granted by this Court and the Supreme Court in the earlier judgments, a three-tier Committee consist of a University Professor, A Degree College Lecturer and a Junior College Lecturer in the respective subjects was constituted for preparing a key which will have to be published after the test is over. The members of the said Committee were provided with the question papers and also the key prepared by the respective persons who have set the question paper. The Committee prepared a draft key which was published on 21-5-1998 calling for objections from the interested persons on or before 25-5-1998 so as to enable the Committee to prepare the final key which will be the basis for valuing the answer scripts. It is stated that in all 629 responses were received relating to the various subjects. After receipt of the representations and objections, the Expert Committee has thoroughly gone through the same and prepared the final key answers along with their recommendation for deleting 23 questions for various reasons which are set out in the counter-affidavit filed on behalf of the second respondent. It is pertinent to note that no mala fides or bad faith is attributed to the Committee of Experts. It is not shown that any prejudice was thereby caused to the petitioners. On the contrary, the benefit of such deletion accrued to all the candidates uniformly thereby raising the threshold level. The petitioners cannot have any legitimate cause for complaint on this score. I am, therefore, of the considered opinion that the general objection raised by the petitioners for the deletion of the 23 questions has to fail.

11. There was some amount of argument before me regarding some questions, which were sought to be deleted on the ground that they were outside the scope of the prescribed syllabus. The petitioners assert that these questions are very much within the prescribed syllabus and the learned Counsel for the petitioners have endeavoured to demonstrate the same by referring to the syllabus as set out in the instruction booklet for the Entrance Test and some text-books. I am not, however, inclined to examine the same inasmuch as a Committee of Experts, who are well qualified and acquainted with the subjects concerned, have come to the conclusion that these questions are beyond the prescribed syllabus. I have no reason to doubt their competence or the correctness of their view in the matter. The claim of the petitioners for inclusion of these questions and for awarding marks to them, therefore, fails.”

10. In view of the law laid down in the above referred authoritative pronouncements, it can neither be said nor concluded that the respondents have no power to delete the questions and have no authorisation to publish preliminary and final keys and to invite objections before publication of final keys. The contention contra advanced and sought to be pressed into service by the learned counsel for the petitioner cannot be sustained and has no legs to stand. In fact, the judgment in *R. Krishan Kumar v. Convenor, EAMCET 1998 JNT University, Hyderabad* (4 supra) repelled and disapproved the said contention. The respondents while publishing the final key deleted seven (7) questions in three subjects either on the ground of the same being beyond syllabus or on the ground of “No answer” or on the ground of “typographic mistake”. The reports submitted by the Three Men Expert Committee constituted for the three subjects in the instant case are placed on record by the learned Standing Counsel. A perusal of the same, manifestly and unequivocally discloses that the respondents appointed highly qualified people as members of the said Expert Committee. In the counter affidavit filed by the 2nd respondent, the reasons for deletion are categorically and elaborately assigned, discussed and explained question wise basing on the said reports of the experts. In the

absence of any malafides, the veracity of the said reports can neither be faulted nor doubted. It is a well settled proposition of law that the Courts cannot sit as an appellate body on the opinions expressed by the said Expert Committees, unless the same are tainted by any malafides. The judgments, on which, the learned counsel for the petitioner places reliance would not render any assistance to the petitioner herein in the facts and circumstances of the case and in view of the reasons assigned by the respondents in the counter and in view of the reports of the Expert Committees.

11. In the facts and circumstances of the case, this Court has absolutely no scintilla of hesitation nor any traces any doubt to hold that the present writ petition is devoid of merits.

12. For the aforesaid reasons and having regard to the principles and parameters laid down in the above referred judgments, the writ petition is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 04.8.2015
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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04.8.2015

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.17181 of 2015

Date: 04.8.2015

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Between:

Poreddy Greeshma D/o P.Siva Nagi Reddy ... Petitioner

and

State of A.P., rep. by its
Secretary, Higher Education (EC.2)
Department, Secretariat, Hyderabad and others. ... Respondents

DATE OF JUDGMENT PRONOUNCED: 04th August, 2015

SUBMITTED FOR APPROVAL: 04th August, 2015

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THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

1. Whether Reporters of Local Newspapers
May be allowed to see the Judgment?

Yes/No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals?

Yes/No
3. Whether Their Lordship wish to see the
Fair copy of the judgment?

Yes/No

[\[1\]](#) 2006 (5) ALD 275
[\[2\]](#) (2002) 3 SCC 586
[\[3\]](#) (1985) 2 SCC 197
[\[4\]](#) 1998 (5) ALD 332