

HON'BLE SRI JUSTICE R. SUBHASH REDDY
And
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.29006 of 2015

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ORDER : (Per Justice R.Subhash Reddy)

This writ petition is filed, seeking writ of mandamus or any other appropriate writ declaring the action of 1st respondent-University in selecting the final key answer as option 'A' for Question No.89 in the admission test for entry into M.Ch. Genito Urinary Surgery (Urology), as illegal and arbitrary and to direct the 1st respondent to treat option 'C' as answered by the petitioner, as correct answer and consequently, by revising the merit list, admit the petitioner into said course for the academic year 2015-16.

1st respondent is the University established in the State of Andhra Pradesh under the provisions of Sri Venkateswara Institute of Medical Sciences University Act, 1995. The petitioner herein has completed his M.S. in General Surgery from Osmania Medical College, Hyderabad during the period 2010-13. The 1st respondent-University has issued notification and prospectus for admitting the students into D.M./M.Ch. course for the Academic Year 2015-16. The petitioner as well as respondent Nos.2 and 3 are among the candidates applied for the course in "Genito Urinary

Surgery (Urology), for which, totally 4 seats are available. The online written test was conducted on 11.07.2015 and all the questions are of multiple choice. The provisional key was notified on 13.07.2015 and after receipt of certain objections, by referring such objections to a Committee of experts, the key answer was changed for question No.89. Based on the final key, merit list was prepared and published on 20.07.2015, in which, petitioner's name was figured at Serial No.5, as he secured 86 marks in the said test and an aggregate of 62.46% marks in MBBS course. The 2nd respondent herein has secured 87 marks in the written test and 66.31% of marks in MBBS and the 3rd respondent has secured 86 marks in the written test and 65.38% of marks in MBBS course. In this writ petition, it is the grievance of the petitioner that though the correct answer for question No.89 is option 'C', only at the instance and objection raised by the 2nd respondent, the answer is changed from option 'C' to 'A'. Thus, it is alleged that the 2nd respondent is awarded one mark illegally, and at the same time, the petitioner is deprived of one mark by changing the answer on the objection of 2nd respondent. To substantiate his contention that option 'C' is correct, the petitioner has filed extracts of the subject book, namely, 25th Edition of Bailey & Love's Short Practice of Surgery. He also claims that as per SRB's Manual of Surgery also, option 'C' is correct but not option

‘A’, as finalized by the 1st respondent-University.

The Registrar of the 1st respondent-University has filed counter affidavit. In the counter, while denying the various allegations made by the petitioner, it is stated that online test was conducted on 11.07.2015 and provisional key was notified on 13.07.2015 and final key was published on 21.07.2015. It is stated that in the provisional key, the answer for question No.89 was given as ‘C’, but when objections were raised by the candidates stating that option ‘A’ is correct answer, such objections were sent to subject experts who have scrutinized the queries and sent the final report. It is stated that on verification of the objections with reference to the subject book, namely, Campbell-Walsh Urology, 10th, 9th, 8th and 7th editions, which are of international standard books for urology, the correct answer for question No.89 was changed from option ‘C’ to option ‘A’ by the subject experts. The extracts of the book are also enclosed along with the counter affidavit. It is also mentioned in the counter that for question No.89, 56.76% of the students (42 out of 74) have opted option ‘A’ as their answer and 24.32% of students (18 out of 74) have opted option ‘C’ as their answer. In the counter, it is also averred that there is delay and laches on the part of petitioner, as he approached the Court only after 1½ months of declaration of final key and the result.

The 2nd respondent has also filed counter affidavit, in which, while denying the various allegations made by the petitioner, it is stated that pursuant to his admission into M.Ch. Urology course for the Academic Year 2015-16, classes have commenced from 01.08.2015 and he has been attending the classes for the last more than 45 days. It is pleaded that in this kind of matters, each day is important and in the absence of any valid reason for the delay of 45 days, the petition filed by the petitioner is liable to be rejected. It is further averred in the counter that the petitioner has relied on the 25th Edition of Bailey & Love's Short Practice of Surgery and also on SRB's Manual of Surgery, stating those books to be standard text books, but it is stated that as M.Ch. is a superspeciality course, the most commonly followed text book is Campbell-Walsh Urology. In the counter affidavit, the 2nd respondent has also pleaded that the correct answer to question No.89 is option 'A', but not option 'C' as pleaded by the petitioner. He has also referred to the relevant portions relied on by him with reference to subject book of Campbell-Walsh Urology.

Another counter affidavit is filed by the 3rd respondent. In the said counter, it is averred that he secured 86 marks in the written examination and thereafter, counseling took place on 27.07.2015 and he

was granted admission in the seat which is reserved for O.U. local area on 10.08.2015 and on the same day, he has joined the course and is attending the classes regularly. While referring to the objection of 2nd respondent, it is pleaded that after publication of provisional key, 2nd respondent has raised an objection stating that there were more than one correct options for question No.89 and he did not raise any specific objection stating to change the option from 'C' to 'A'. Even in this counter, it is stated that SRB's Manual of Surgery is a replica of Bailey & Love's Short Practice of Surgery, but the said books cannot be considered as authoritative books on Urology, as contended by the petitioner. While stating that M.Ch. is a superspeciality course and the authoritative text book on the subject is Campbell-Walsh Urology, it is averred that the correct answer for question No.89 is option 'A' but not option 'C', as pleaded by the petitioner.

Heard Sri G.Vidya Sagar, learned Senior Counsel appearing for Smt.K.Udaya Sri, counsel for petitioner, Smt. P.Sharada, learned counsel appearing for the 1st respondent-University, Sri Vedula Srinivas, learned counsel for 2nd respondent and Sri M.S.R. Subrahmanyam, learned counsel for the 3rd respondent.

Before we deal with the rival contentions advanced

by the learned counsel for the parties, it is fairly well settled that the scope of interference by this Court in the matters of this nature in exercise of powers under Article 226 of Constitution of India, is limited. In the judgment of Hon'ble Supreme Court in the case of **Kanpur University & others v. Samir Gupta & others**^[1], it is held that the correctness of the key answers should be ascertained from the standard and prescribed text book and not merely on the basis of inferences. In the aforesaid judgment, it is further held that the key answer should be assumed to be correct unless it is proved demonstrably by placing cogent material in support of the claim.

Various dates as mentioned with regard to issuance of notification, publication of provisional key, publication of final key, date of counseling, date of admissions are not in dispute. The dispute is with regard to question No.89, which reads with options 'A', 'B', 'C' and 'D', as under :

- “89. Atypical presentation of left renal cell carcinoma are except :
- A) Nephrotic syndrome
 - B) Persistent pyrexia
 - C) Rapidly developing varicocele
 - D) Polycythemia”

It is the contention of petitioner that having regard to the type of question framed, the correct answer is option 'C' i.e. Rapidly developing varicocele, but not option 'A' i.e. Nephrotic syndrome. It is his case that the word “Atypical”

used in the question means, unusual, uncommon, unorthodox, unconventional, abnormal and isolated, as such, the correct answer for the question is only Rapidly developing varicocele but not Nephrotic syndrome. The petitioner has placed reliance on the subject book of Bailey & Love's Short Practice of Surgery. The relevant portion relied on by the petitioner reads as under :

"Clinical features Adenocarcinoma of the kidney is twice as common in men as in women. Haematuria is usually the presenting symptom, sometimes with clot colic. There may be a dragging discomfort in the loin or the patient may detect a mass. In men, a rapidly developing varicocele is a rare but impressive sign, occurring most often on the left side because the left gonadal vein is obstructed where it joins the left renal vein.

Atypical presentations In 25% of cases there are no local symptoms. The patient presents with symptomatic secondary deposits in bone or the lung (persistent cough or haemoptysis). Occasionally, persistent pyrexia (37.8-38.9 degree centigrade) with no evidence of infection is the only symptom. Pyrexia after nephrectomy suggests metastases.

A few patients present with constitutional symptoms and anaemia.

Polycythaemia occurs in 4% of cases as a result of the production of erythropoietin by tumour cells. The erythrocyte sedimentation rate is always raised above the 1-2 mm found in idiopathic polycythaemia vera. The blood count

returns to normal after nephrectomy unless there are metastases. Other hormones, such as rennin and calcitonin, may be produced by the tumour. Hypercalcaemia is common.

Nephritic syndrome has been reported as a rare presentation of hypernephroma.”

Similar such material from SRB’s Manual of Surgery is also placed on record. In the counter affidavit filed by the 1st respondent-University, it is pleaded that in medical terminology, “Atypical” is one word which means ‘Distinctive’ or ‘Characteristic’. As question No.89 is framed as “Atypical (distinctive) presentation of left renal cell carcinoma are except”, the correct answer is option ‘A’ i.e. Nephrotic syndrome. To substantiate that option ‘A’ is correct answer, the extract from Volume 2 of 10th Edition of Campbell-Walsh Urology, is placed on record and a portion from page 1437 of the said book reads as under :

“Incidence of Systemic Syndromes Associated with Renal Cell Carcinoma :

SYNDROME	%
Elevated erythrocyte sedimentation rate	55.6
Hypertension	37.5
Anemia	36.3
Cachexia, weight loss	34.5
Pyrexia	17.2
Abnormal liver function	14.4
Hypercalcemia	4.9
Polycythemia	3.5
Neuromyopathy	3.2
Amyloidosis	2.0

A minority of patients present with symptoms directly related to metastatic disease, such as bone pain or persistent cough. A less common but important presentation of RCC is that of spontaneous perirenal hemorrhage, although the underlying mass is often obscured by the blood. Zhang and colleagues (2002) have shown that more than 50% of patients with perirenal hematoma of unclear etiology have an occult renal tumor, most often AML or RCC.”

The learned counsel for 1st respondent-University has also filed extracts from 9th, 8th and 7th Editions of the same book, in which, same view, as expressed in the 10th Edition, is expressed. Further, even in the text relied on by the counsel for petitioner in 25th Edition of Bailey & Love’s Short Practice of Surgery also, Nephrotic syndrome has been reported as a rare presentation of hypernephroma.

Having regard to the material placed on record, we are of the view that no case is made out by the petitioner to prove that the final key answer for question No.89, selected by the 1st respondent-University as ‘A’ i.e. Nephrotic syndrome as demonstrably wrong, as held by the Hon’ble Supreme Court in **Kanpur University**’s case (1 supra). It is also not disputed that the subject text book of Campbell-Walsh Urology is the expert subject book of international standard in the field of Urology. In that view

of the matter, even assuming that there is slight difference of opinion in the text books referred by different authors, there is no reason for rejecting the opinion expressed by the experts that option 'A' is correct answer for question No.89. It is true that initially, after online test was conducted on 11.07.2015, provisional key was published by showing option 'C' i.e. Rapidly developing varicocele as correct answer, but after receiving objections, such objections were referred to the Committee of experts and on their opinion only, final key is published showing option 'A' i.e. Nephrotic syndrome as correct answer. As evident from the counter affidavit filed by the 3rd respondent, the 2nd respondent, in his objections, has not indicated to accept option 'A' as correct answer, but he has only pleaded that there are several correct answers to the question. In that view of the matter, having regard to the opinion expressed by the experts, it cannot be said that only at the instance of 2nd respondent, the key answer is changed from option 'C' to option 'A'.

There is yet another ground to reject the plea of the petitioner, as we find force in the contention advanced by the learned counsel for respondents that there is delay and laches on the part of the petitioner in approaching the Court. As evident from the counter affidavit filed by the 1st respondent, the final key was published on 21.07.2015, whereas, the petitioner has filed this writ petition on

07.09.2015, as such, there is delay of more than 45 days, and in the meanwhile, respondents 2 and 3 are admitted into the course and are pursuing the same since for more than 45 days. It is also not disputed that the petitioner has not even attended the counseling held on 27.07.2015. In this regard, the learned counsel for 2nd respondent Sri Vedula Srinivas has placed reliance on the judgment of Hon'ble Supreme Court in the case of **Ramchandra Shankar Deodhar & others v. The State of Maharashtra & others**^[2], wherein, it is held that the rule which says that a Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. In the same judgment, it is held that the rights accrued to others by reason of delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for such delay.

In this case, we do not find any justifiable reason on the part of petitioner for not approaching the Court immediately after publication of final key and the merit list. As respondent Nos.2 and 3 are admitted and have completed 1½ months of their course, we are of the view that on this ground of laches and delay also, this is not a case where interference is called for by exercising powers

under Article 226 of the Constitution of India.

For the aforesaid reasons, this writ petition is devoid of merit and it is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

29th September 2015

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[\[1\]](#) 1983 (4) SCC 309

[\[2\]](#) AIR 1974 SC 259