

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 10th July, 2015

+ W.P.(C) No. 6073/2015 & CM No. 11032/2015 (for interim relief)

TRIPTI JHA

..... Petitioner

Through: Mr. Rana Mukherjee, Sr. Adv. with
Mr. C.D. Singh, Advocate.

Versus

**GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ANR**

..... Respondents

Through: Mr. Mukul Talwar, Senior Advocate
with Mr. Vaibhav Kalra, Advocate for
GGSIU.

AND

+ W.P.(C) No. 6066/2015

SHIVIN CHAUDHARY

..... Petitioner

Through: Mr. Girdhar Govind and Mr. Puneet
Maheshwari, Advs.

Versus

**GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY
& ANR**

..... Respondents

Through: Mr. Mukul Talwar, Sr. Adv. with Mr.
Vaibhav Kalra, Adv. for GGSIPU.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The petitioner in W.P.(C) No.6073/2015 had appeared in the Common Entrance Test (CET) conducted by the respondent no.1 Guru Gobind Singh Indraprastha (GGSIP) University [the respondent no.2 is the In-charge (Admission) of the respondent no.1 GGSIP University] for admission to the

MBBS course in the Academic Year 2015-16, the result of Stage-II whereof was declared on 27th May, 2015 but, just before the commencement of counselling was revised on 20th June, 2015. The reason given by the respondent University for revision in result, as per the petition, was (a) that consequent to the declaration of the result on 27th May, 2015, certain applications were received for inspection of OMR answer sheets; (b) the said applications were considered as per the extant regulations and the applicants allowed to inspect their OMR answer sheets along with relevant questions booklet and corresponding answer key; (c) some of the applicants expressed doubt over the answers to some of the questions, particularly in Chemistry part in the answer key and requested for review of the answer key; (d) the matter was referred to a Committee of experts to comprehensively examine the test booklet series and respective answer keys in the light of doubts expressed; and, (e) the Committee made certain recommendations and in accordance with the said recommendations 21 marks were awarded to all the candidates and answer to 11 questions of Chemistry section identified as incorrect were rectified by replacing with the correct answers and corrected answers keys used for re-evaluation and answer to one question in Zoology section was identified as incorrect in the answer key of “A” series and was

rectified by replacing with the correct answer and corrected answer keys were used for re-evaluation.

2. As a result of the aforesaid, the rank of the petitioner in the result of the examination was changed from 155 to 232. The petitioner filed this petition challenging the said revision in result on the ground, (i) that as per the Admission Brochure published by the respondent University, no request for re-checking, re-evaluation, re-assessment or scrutiny of OMR sheet was to be entertained; (ii) however the respondent University contrary thereto admittedly entertained the applications for inspection of OMR sheets and on the basis thereof revised the result; (iii) that the revised result was thus in contravention of the Guidelines provided in the Brochure of Admission; and, (iv) that the revision in the result was even otherwise non-transparent and arbitrary.

3. Reference in the petition itself is made to, (a) ***Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission*** AIR 2004 SC 4116 to contend that in the absence of any provision for re-evaluation, no candidate has any right thereto; and, (ii) ***Rupinder Singh Vs. The Punjab State Board of Technical Education & Industrial Training, Chandigarh***

2001 (1) SLR 759 (Full Bench) (Punjab & Haryana) to contend that Brochure in relation to admission to any course has got the force of law.

4. The petitioner, in the petition, has claimed the reliefs of, (a) conducting the counselling on the basis of the result as originally announced; and, (b) quashing the revised result and revision of the merit list to as earlier announced.

5. The aforesaid petition came up first before the Vacation Bench on 26th June, 2015 when notice thereof was issued and the statement of the counsel for the respondent University, appearing on advance notice, to the effect that the counselling was not to be held at least till 29th June, 2015 was recorded. The counsel for the respondent University on 29th June, 2015 filed a counter- affidavit in the Court and on request of the petitioner the matter was adjourned to 30th June, 2015 when arguments were heard and judgment reserved.

6. The respondent University in its counter affidavit has pleaded, (i) that during the examination various representations were received from the candidates that there were some wrong questions in the test booklets and the observers deputed by the respondent University at various examination

centres also reported so; (ii) that as per the Policy of the respondent University with respect to common entrance tests held by it for admission to different courses, contained in the Office Order dated 25th February, 2012, if there is a printing mistake in the question or the question is incomplete due to want of some data or text, the question will not be considered for evaluation and all marks of that question will be given to all candidates; (iii) that pursuant to the said representations it was concluded that there were five erroneous questions, three in Physics section and two in Chemistry section and accordingly a decision was taken to award 15 marks over and above the marks secured by each candidate to all the candidates; (iv) that thus, though the petitioner had secured 373 marks but in the result as originally declared she was awarded 388 marks and as per which her rank was 155; (v) that after the declaration of result, a number of candidates applied for inspection of their OMR sheets; (vi) that though as per the Information Bulletin the same was not permitted but was allowed as per observations of this Court in order dated 7th May, 2015 in LPA No.5431/2014 titled ***Master Rajat Mann Vs. Guru Gobind Singh Indraprastha University***; (vii) some of the said candidates, post inspection of OMR sheets and answer key, expressed doubts over the correctness of some of the answers in the answer key,

particularly in the chemistry part and requested for review of the answer key; (viii) the matter was referred to a Committee of experts and in accordance with recommendation whereof the result was revised; (ix) that in the revised result, the total marks of the petitioner were increased from 388 to 400; (x) however the ranking of the petitioner moved from 155 to 232; (xi) that on 25th June, 2015 notice was published inviting all candidates to come and inspect their answer sheets along with copy of the question paper and the correct answer key; (xii) that the revision of the result is *bona fide* and in good faith; and, (xiii) the respondent University *suo motu* took the appropriate measures to remedy the wrong which was inadvertently there in the result declared on 27th May, 2015.

7. Though the petitioner availed of opportunity to file rejoinder but has not filed any rejoinder.

8. The senior counsel for the petitioner, during the hearing, admitted that the petitioner, inspite of Notice supra dated 25th June, 2015 of the respondent University giving opportunity to all candidates to inspect their answer sheets, question paper and the answer key, had not availed of the said opportunity.

9. The petitioner, neither in the pleadings nor during the hearing, made out any case of any error in the revised result. The senior counsel for the petitioner, during the hearing, also did not find any fault with the recommendations of the Expert Committee leading to the revision of the result.

10. In fact, the senior counsel for the petitioner in the face of the aforesaid situation did not even press the reliefs claimed in the petition of quashing of the revised result and did not seek any direction to the respondent University to make admissions as per the result as originally declared. On the contrary, the relief which was sought during the hearing, was of cancellation / scrapping of the CET aforesaid and of a direction to conduct a fresh CET.

11. In this respect the senior counsel for the petitioner contended that once it has been proved that there were grave errors in a large number of questions as well as in the answer key, admissions ought not to be permitted to be made on the basis of result of such an examination. Reliance obviously was placed on the recent dicta dated 15th June, 2015 of the Supreme Court in W.P.(C) No.298/2015 titled *Tanvi Sarwal Vs. Central Board of Secondary Education* scrapping the All India Pre Medical Test and it was argued that

on the same reasoning the examination aforesaid should also be scrapped. Strong reliance was also placed on the judgment of a Single Judge of the Allahabad High Court in *Vinod Kumar Tripathi Vs. State of U.P.* MANU/UP/2063/2007.

12. It was additionally argued, (a) that the revision of the result was effected without any notice to all the candidates who had taken the examination; (b) that before effecting the corrections in the answer key, notice to each of the candidates should have been given; (c) the corrections effected were not notified on the website; (d) that the candidates were kept totally in the dark; (e) that the entire process was thus vitiated; and, (f) that the corrections were effected in a hurry and for which there was no need. It was further contended that the action of the respondent University was lacking in procedural fairness.

13. Per contra, the senior counsel for the respondent University contended that, (i) that the petitioner, without specifically seeking in the petition, cannot be granted the relief of setting aside / scrapping of the entire examination; (ii) that owing to the corrections effected *suo moto* by the respondent University even prior to the declaration of the result on 27th May,

2015 the total marks of the petitioner were increased from 373 to 388; (iii) that owing to the subsequent revision of the result, the marks of the petitioner were further enhanced to 400; (iv) that thus, the petitioner instead of being adversely affected by the corrections / revision made, has benefited therefrom; (v) it is a different matter that other candidates have benefited to a larger extent from the said corrections / revision and owing to which the rank of the petitioner has been setback from 155 to 232; (vi) that the petitioner has not challenged the corrected answer key and in fact did not even deem it necessary to seek inspection of her OMR sheet, question paper and answer key inspite of opportunity therefor given vide notice dated 25th July, 2015; (vii) that the petitioner has not challenged the *suo motu* correction by the respondent University which led to her getting 15 additional marks; (viii) the petitioner has not made any allegations of action of the respondent University being biased or *mala fide* or motivated or being perverse; and, (ix) that the corrections / revision aforesaid have been made on the recommendations of an Expert Committee of Educationists and this Court ought not to substitute its own opinion for the same .

14. The senior counsel for the petitioner in rejoinder has argued that, (a) the time of three days given on 25th June, 2015 for inspection of the OMR

sheet, question paper and answer key was too short; (b) that in fact the petitioner had filed this petition on 24th June, 2015 and thus did not feel the need to avail of the Notice dated 25th June, 2015 of inspection; (c) even otherwise such inspection would not have entitled the petitioner to examine the OMR sheets of others; and, (d) that the petitioner should be permitted inspection of the OMR sheets of all the candidates to satisfy her of the correctness of the result declared by the respondent University.

15. I have considered the factual position as emerges from the aforesaid and the rival contentions.

16. At the outset, it may be recorded that the Division Bench of this Court of which the undersigned was a member, in ***Master Rajat Mann*** 219 (2015) DLT 791 (supra), concerned with the CET held by the respondent University for admission to the MBBS course of the Academic Year 2014-2015 and its Policy of not entertaining any requests of re-evaluation / re-checking of OMR sheets, had directed the respondent University to review its Policy, Rules, Regulations qua question paper, answer key and OMR answer sheets. In the light of the said direction, no error can be found in the action of the respondent University of, notwithstanding the terms and conditions of its

Admission Brochure, entertaining the requests for inspection of OMR answer sheets and answer key and entertaining objections / representations thereagainst. Notice in this regard may also be taken of the order dated 8th April, 2015 of the same Division Bench in WP(C) No.2275/2010 titled ***Rajeev Kumar Vs. Union of India*** MANU/DE/1094/2015 concerned with JEE examination held by CBSE and IITs for admissions to IITs and NITs and which examinations also did not have proper provision for entertaining objections to answer key and with respect where to also similar directions were issued. In the light of the said judicial pronouncements, the action of the respondent University of allowing inspection of OMR sheets and answer key and entertaining objections with respect thereto, all contrary to the terms of its admission brochure, which otherwise undoubtedly is binding and cannot be changed, cannot be found fault with. It may however be noticed that a provision for correction of mistakes already existed in the office order dated 25th February, 2012 (supra) of the respondent University and thus the only violation of the Admission brochure is in allowing inspection to candidates and which led to discovery of mistakes.

17. I had even otherwise during the hearing enquired from the senior counsel for the petitioner that if he is not able to find fault with the

corrections / revision effected by the respondent University, would not granting the relief of quashing the revised result and directing the respondent University to make admissions in terms of the result as originally announced amount to admitting students who had answered wrongly and rejecting admission of students who had answered correctly and allowing a mistake of the respondent University which though had been detected, to be perpetuated.

18. It was further enquired, whether the petitioner, in law, can be granted the relief of admission when as per the revised / corrected result she may not be entitled to admission. To do so, in my view would amount to converting into reality what was said by Charles Dickens in a work of fiction ‘Oliver Twist’ that “law is an ass”. Supreme Court in ***M.S. Grewal Vs. Deep Chand Sood*** (2001) 8 SCC 151 held that, technicalities there might be many but the justice oriented approach ought not to be thwarted on the basis of such technicality since it cannot be and ought not to outweigh the course of justice. Earlier also in ***Busching Schmitz Private Ltd Vs P.T. Menghani*** (1977) 2 SCC 835, it was held that the principle of unconscionability clothes the Court with the power to prevent its process being rendered a parody.

19. To be fair to the senior counsel for the petitioner, he did not urge so. He on the contrary contended that it is for this reason only that he is seeking cancellation of the examination.

20. I may however add that the Supreme Court in ***Sahiti Vs. Dr. N.T.R. University of Health Sciences*** (2009) 1 SCC 599 rejected the contention that in the absence of specific provision, re-evaluation cannot be ordered. It was held that re-evaluation of answer scripts in the absence of specific provision is perfectly legal and permissible. It was further held that the Vice Chancellor is the conscience keeper of the University and is entrusted with the responsibility of overall administration of academic as well as non academic affairs. A distinction was also drawn between the right of the student or candidate to claim re-examination / re-evaluation and the power of the Board / University to order re-evaluation of answer books if factual scenario so demands. It was further held that when it is found that award of marks by an examiner is not fair or that the examiner is not careful in evaluating the answer scripts, re-evaluation may be found necessary. Reference in this regard may also be made to the judgment of the High Court of Punjab and Haryana in ***Surinder Pal Singh Vs. State of Punjab***

(2013) SCC Online P&H 8843 where also *suo motu* re-evaluation was upheld.

21. I may notice that re-evaluation in the present case is of the OMR answer sheets of all the students, across the board and not of some of the students only. No fault or arbitrariness can be found with the said action of the respondent University.

22. That brings us to the plea of the senior counsel for the petitioner for cancellation of the examination and holding of fresh examination. I have recently in judgment dated 1st July, 2015 in W.P.(C) No.6172/2015 titled ***Tushant Vs. University of Delhi*** in this context held that:-

“10. No case for annulment of examination is made out. Competitive examinations, holding whereof takes mammoth organization, cannot be annulled on mere conjectures and surmises. It cannot be lost sight of that annulment of examination and consequent holding of fresh examination (which takes re-organization and hence time) ultimately delays the entire admission process and commencement of academic session and which in turn has cascading effect on subsequent years or reduces the length of the academic year. The same also results in the students being inconvenienced and being unable to make choices, of admission in other colleges / universities or subjects, which they can make with timely declaration of results and admission. Holding of fresh examination also, besides costing money, takes considerable effort. Annulment of examination without proper cause will thus be detrimental

to the University as well as the large number of candidates taking the examination and against the public interest and would amount to a cure worse than disease. The Supreme Court in **Onkar Lal Bajaj Vs. Union of India** (2003) 2 SCC 673 while dealing with a challenge to the en masse cancellation of all allotments of retail outlets for marketing of petrol and diesel and finding that the only reason for such en masse cancellation was that a 'controversy' had been raised in the media and that there was otherwise no application of mind and none of the allotments made had been examined held such en masse cancellation to be arbitrary and contrary to public interest. It was held that the mere reason that a 'controversy' had been raised by itself could not clothe the Government with the power to pass such a drastic order which has a devastating effect on a large number of people. It was held that such en masse cancellation could be resorted to only on finding a large number of such selections to be tainted and segregation of good and bad being difficult and a time consuming affair. The examinations are thus not to be annulled lightly, on the mere asking of any one with the allegations of possibility of the same having been corrupted. Only when it is sufficiently established that the examination though purportedly conducted was no examination and can no longer be treated as a test of proficiency of students taking the same or had ceased to be competitive and that the defects / malpractices therein had seeped to such an extent as to make it impossible for the examining authority or the Court to determine a fair result of the examination would the Court, in my opinion, be justified in annulling an examination.

11. The Supreme Court in **Ashok Lenka Vs. Rishi Dikshit** (2006) 9 SCC 90 though concerned with en masse cancellation of excise licenses held that though in law it is permissible to cancel the entire selection process if it is held that the same is tainted to such an extent that it may not be possible to separate the innocent from the tainted ones, as for example in a case of mass cheating adopted by the

*students in a Board Examination, should not be resorted to if it is possible to separate the innocent from the tainted ones. It was held that en masse cancellation resorted to without a cause would be violative of Article 14 of the Constitution of India. Similarly in **Union of India Vs. Rajesh P.U., Puthuvalnikathu** AIR 2003 SC 4222 held that applying an unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of the selected candidates no infirmity could be found with reference to others is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go bye to contextual considerations and throwing to winds the principle of proportionality in going farther than what was strictly and reasonably required to meet the situation. It was held that the Competent Authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, totally in excess of the nature and gravity of what was at stake, rendering the decision of cancellation to be irrational.*

12. *Recently a Division Bench of this Court in **Mukesh Rao Vs. Union of India** MANU/DE/0985/2015 (and against which no SLP is found to have been filed) set aside the order of cancellation of the Limited Departmental Competitive Examination upon not finding that anything which could be said to incriminate the petitioners therein or the other candidates in general. It was held that the cancellation was effected merely on suspicion which was unfounded and that the candidates taking the examination cannot be made to suffer. It was further held that cancellation of the entire selection process on a mere suspicion that 4 out of the 1228 candidates could have used their mobile phones is not a sufficient ground to cancel the entire selection process and that the selected candidates ought not to be disqualified by ordering re-examination.*

13. *The Supreme Court recently in **Joginder Pal Vs. State of Punjab** (2014) 6 SCC 644 again reiterated that where the tainted candidates in a selection process could be segregated from others, innocent persons should not be punished with the tainted. The Supreme Court earlier also in **Rajesh Kumar Vs. State of Bihar** (2013) 4 SCC 690 had echoed the same sentiment in a case of erroneous answer key. It was held that innocent persons participating in the selection who had not contributed to the preparation of the erroneous key or the distorted result and who had not practiced any fraud or malpractice should not be punished. Accordingly the order of setting aside of the selection was substituted with a direction for re-evaluation.*

14. *There is another aspect. We are dealing with educational matters, in which the opinion of experts therein is not to be lightly interfered with. The respondent University, being the examining authority / body, on the aforesaid facts has not deemed a case for cancelling the entire examination to have been made out. The Courts are not to substitute their own opinion in such matters. The Supreme Court, reasoning so, in **Chairman, J&K State Board of Education Vs. Feyaz Ahmed** (2000) 3 SCC 59, set aside the order of the High court interfering with the decision of the examining body in that case to cancel the exam. To the same effect is the subsequent judgment in **B. Ramanjini Vs. State of Andhra Pradesh** (2002) 5 SCC 533. No case for finding fault with the decision of respondent University to, in the facts, not cancel the examination is made out.”*

23. In my opinion, the controversy herein is squarely covered by the dicta aforesaid of the Supreme Court in **Joginder Pal** to which unfortunately neither of the counsels referred. It is not the case of the petitioner that the

mistakes in the questions and in the answer key were such which made it impossible to determine a fair result of the examination. The mistakes were rectifiable and were rightly rectified and the corrected / revised result represents the fair and competitive results of the examination. Such action on the part of the examining body, of taking corrective steps on the basis of expert opinion, was held to be reasonable even in *Pankaj Sharma Vs. State of Jammu & Kashmir* (2008) 4 SCC 273.

24. As far as the reliance by the senior counsel for the petitioner on the recent dicta of the Supreme Court in *Tanvi Sarwal* (supra) is concerned, a perusal of paras 15&16 of the said judgment shows that the situation there was entirely different. There, on investigation, facts suggesting mass scale cheating with use of electronic media had been unearthed and owing where to it was felt that it was impossible to determine a fair result of the examination. Such is not the case here. The respondent University has corrected / revised the result in accordance with the recommendations of the Expert Committee.

25. Notice may also be taken of the judgment of the Division Bench of this Court in *Gunjan Sinha Jain Vs. Registrar General, High Court of Delhi* 188(2012) DLT 627 with respect to the Delhi Judicial Services

Examination . There also, on finding errors in the questions and the answer key, revaluation and revision of the result was ordered; and the examination was not cancelled.

26. As far as the judgment supra of the learned Single Judge of the Allahabad High Court is concerned, the reliance thereon is misconceived. Therein the petitioner had challenged the answer key but the University had contested the said challenge. The learned Single Judge after satisfying himself of the merit in the challenge, and in the wake of the difficulty in segregation of the legal selectees from the illegal ones, directed cancellation of the examination. Moreover, the aspect whether the relief to be granted was of correction of the result or of cancellation of the examination was not considered. In any case in the light of the dicta aforesaid of the Supreme Court, the said judgment is of no avail.

27. As far as the challenge to the procedure adopted by the respondent University in rectifying / revising the result is concerned, it cannot be lost sight of that the Supreme Court has by judicial pronouncements laid down the schedule for examination to MBBS course and the last date for such admissions. The time available for revision / rectification is thus limited. I even otherwise am not agreeable with the contention that the respondent

University prior to rectifying the result was required to give an opportunity of hearing to all the candidates appearing in the examination. Thousands if not lakhs of students appear in such examinations and it is not practically feasible to give any such opportunity. No such right of hearing also, in my view exists in favour of the candidates. The respondent University, vide notice dated 25th June, 2015 gave an opportunity to all the candidates to inspect the question paper answer key and their respective OMR answer sheet. This was in accordance with directions in ***Rajat Mann & Rajeev Kumar*** (supra) If the petitioner or any other candidate on any such inspection discovered any mistake in the answer key, he / she could have pointed out the same. The petitioner did not choose to do so. The contentions now raised that the petitioner is entitled to verify the result by examining the OMR sheets of all the candidates is just a wild attempt to have the examination, in which the petitioner assesses herself to have not done well, annulled and to have a second chance / opportunity to improve her result. The same cannot be allowed. The principle laid down by the Supreme Court in ***Bihar School Examination Board Vs. Subhas Chandra Sinha*** (1970) 1 SCC 648 and in ***Ram Preeti Yadav Vs. U.P. Board of High School & Intermediate Education*** (2003) 8 SCC 311 that the examining

body is not required to give an opportunity to the examinees before taking a decision to annul the examination would in my view be attracted to the present situation also.

28. The petitioner in W.P.(C) No.6073/2015 thus cannot be granted the relief pressed of cancellation of the examination.

29. W.P.(C) No.6066/2015 though preferred before the aforesaid writ petition came up for hearing on 3rd July, 2015 and the arguments made by the counsel for the petitioner therein were the same as the arguments in the writ petition aforesaid. The counsel therein also pressed for the relief of cancellation of the examination and holding of fresh examination. What has been held above, applies equally to WP(C) No.6066/2015 as well.

30. Accordingly both petitions are dismissed.

No order as to costs.

RAJIV SAHAI ENDLAW, J

JULY 10, 2015
'pp/gsr'