

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 31.10.2018

DELIVERED ON : 01.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Writ Petition No.14596 of 2013

and

M.P.Nos.1 and 2 of 2013

S.Nelson Prabhakar (Minor)
represented by his father
R.Sivalingam

.. Petitioner

Versus

1.The Central Board of Secondary Education
represented by the Executive Director,
J.E.E (Main) Secretariat,
Central Board of Secondary Education,
PS-1-2 Institutional Area, IP Extension,
Patparganj,
Delhi - 110 092.

2.The Joint Secretary, (JEE-Main)
the Central Board of Secondary Education,
J.E.E(Main) Secretariat
Central Board of Secondary Education,
PS-1-2 Institutional Area, IP Extension,
Patparganj,
Delhi 110 092.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying
for a Writ of Mandamus directing the respondents 1 and 2 to revalue the

answer sheets of the petitioner for the subjects Physics and Mathematics of JEE (Main) 2013 and publish the revaluation result within the time stipulated by this Court.

For Petitioner : Mrs.A.Arulmozhi

For Respondents : Mr.G.Nagarajan

ORDER

The prayer made in this writ petition is to issue a writ of mandamus directing the respondents 1 and 2 to revalue the answer sheets of the petitioner for the subjects - Physics and Mathematics of JEE (Main) 2013 and publish the result within a time to be stipulated by this Court.

2.The factual background of the case is as under:

2.1 The petitioner, after completion of Senior Secondary Course, applied for the National Level Common Entrance Examination for B.E./B.Tech in the Indian Institute of Technology, under SC Category. The said Examination was conducted by the Central Board of Secondary Education (hereinafter shortly referred to as “ the CBSE”) in two levels viz., (i) JEE (Main) and (ii) JEE (Advance) Examination and the candidates who secured the cut off mark in JEE (Main) as per the category, were allowed to write the JEE (Advance) Examination. The petitioner was

assigned the Registration No.8560566 and the first level JEE (Main) examination was held on 07.04.2013. The CBSE published the results in the internet on 07.05.2013, as per which, the petitioner was awarded the marks as given below:

Physics	-	05
Chemistry	-	42
Mathematics	-	0
.....		
Total	-	47
.....		

The cut off mark to appear for the advance level examination was as follows:

<i>Category</i>	<i>Cut off marks</i>
Common Merit List (CML)	113
Other Backward Class (OBC-NCL)	70
Scheduled Caste (SC)	50
Scheduled Tribe (ST)	45

2.2 According to the petitioner, he performed well in the entrance examination and he expected to score above 40 marks in Physics and above 50 in Mathematics, even if there was strict valuation. However, to his shock and dismay, he was awarded only 5 marks in Physics, 42 marks in Chemistry and 0 mark in Mathematics. Hence, he

sent an e-mail on 08.05.2013 to the first respondent requesting to re-check his answer sheets and award the correct marks in Mathematics and Physics and also to furnish the answer sheets and in the mean time, permit him to appear for the advance level examination.

2.3 On receipt of the same, the first respondent has given some contact numbers for the purpose of making application for revaluation, but, there was no response, when the petitioner has contacted those authorities.

2.4 Therefore, the petitioner has sent two other representations dated 11.05.2013 and 13.05.2013 to the first respondent. Even thereafter, he has not received any reply from the respondents. Since the JEE (Advance) examination, 2013 was scheduled to be held on 02.06.2013, the petitioner has approached this Court with the present writ petition for the above stated relief.

3. On 30.05.2013, when the writ petition was taken up for

consideration, this Court granted an interim direction to the first respondent to permit the petitioner to appear for JEE final examination scheduled to be held on 02.06.2013 or any other date. Accordingly, the petitioner produced a copy of the said order to the centre allotted for the examination, but he was not permitted to write the examination on the ground that there was no communication from the respondents. Finding no other option, he joined an engineering course in a private college and completed the same.

4. After the receipt of the notice, the respondents filed a counter affidavit dated 06.10.2016 stating that the petitioner was awarded marks according to the answers written by him and there cannot be any error in awarding the marks to the petitioner and hence, the question of revaluation does not arise. It is further stated therein that no provision was made available for revaluation and the respondents have nothing to do with the conduct of the JEE advance examination, as it is conducted by the Indian Institute of Technology. By stating so, the respondents prayed for dismissal of the writ petition.

5. When the matter was taken up for consideration, this Court

directed the learned Standing Counsel for the respondents to produce the answer scripts of the petitioner. Accordingly, the learned Standing Counsel produced the same, as per which, the marks allotted to the petitioner read as follows:

Subject	Correct answers	Wrong answers	Score
Physics	3	7	5
Chemistry	12	6	42
Mathematics	3	12	0
Total Score			47

In the said examination, the respondents followed the system of negative marks for wrong answers. Accordingly, there were four marks for every right answer and one negative mark for every wrong answer. As far as the petitioner is concerned, he has answered 18 questions correctly and given wrong answers for 25 questions. By applying the mark awarding method as stated above, the calculation of the marks awarded to the petitioner is as under:

Correct answers - $18 \times 4 = 72$
 Wrong answers - $25 \times 1 = 25$
 Total marks - $72 - 25 = 47$

Since the cut off marks for SC category is 50, the petitioner did not

qualify to appear for the JEE Advance Level Examination. Hence, he has come to this Court with the present writ petition.

6.As stated earlier, this Court granted an interim order, directing the first respondent to permit the petitioner to write the JEE Advance Level examination. However, when the petitioner approached the authorities present in the examination centre, he was not allowed to write, as they have not received any communication from the authorities for permitting him to write the examination. Having lost his hope to pursue a course in IIT, the petitioner joined in some other college and got a degree in Engineering. As such, the relief sought in this writ petition has become infructuous, as fairly admitted by the learned counsel for the petitioner, during the course of arguments.

7.However, Mrs.A.Arulmozhi, learned counsel for the petitioner strenuously argued that the facts of the present case brought to light the tyranny of awarding negative marks to the students in the competitive examinations taken at the age of 17 and hence, it is the time for a judicious scrutiny of awarding negative marks to the students by the

CBSE and many other agencies, which conduct competitive examinations. The learned counsel, drawing the attention of this Court to the admission process of various countries such as, the UK, Canada, Australia and Russia, submitted that the most advanced countries do not follow the system of negative marking. According to her, even the CMC, Vellore does not award negative marks in the entrance examination for admission to the Medical College. Therefore, the learned counsel prayed for a suitable direction to the CBSE to withdraw / strike down the method of negative marking.

8. Countering the arguments so made by the learned counsel for the petitioner, the learned Standing Counsel for the respondents submitted that the examination conducted by the respondents are having multiple choice questions and the students are expected to choose the correct option, out of the four options. The learned Standing Counsel further submitted that the students' competency is tested from the subject and if there is no negative marking, the students try to attend all questions without having sound knowledge on the subject. In other words, if there is negative marking for each question, unless and until they are

absolutely sure of the options given in the question, there is in a way dissuade students not to attempt wrong answer. Thus, according to the learned Standing Counsel, the object of having negative marks in the competitive examination is to ensure that only diligent and deserving candidates get selected for admission in the colleges offering professional courses, which cannot be found fault with.

9.This Court paid its anxious consideration to the rival contentions made by the parties and also perused the materials placed before it.

10.Though the prayer made in this writ petition has become infructuous, the key issue which has to be determined herein is with regard to awarding negative marks in the examinations conducted by CBSE. The CBSE is an autonomous body, which has been conducting examinations and deciding the future of millions and millions of students and its refusal to address the issues and grievances of the students with a disclaimer “disowning responsibility for errors crept-in in the result”, warrants judicial interference to execute their mandatory obligation as the ‘State’ under Article 12 of the Constitution of India, as per

constitutional guarantee under Article 21 of the Constitution of India, which has been expanded by the judicial orders to include the education as part of it.

11. “Negative marking” is an evaluation system followed by the CBSE in the competitive examination conducted by them, by which, marks are deducted for wrong answers. But, such an idea derives criticism, since it will create something negative on the students. Normally, tests should be conducted by awarding marks for correct answers alone i.e., marks have to be awarded for correct answers and not to be punished for the wrong ones. If it is otherwise, it would cause a source of discouragement in the minds of the students.

12. At this juncture, it is but relevant to look into the materials produced by the learned counsel for the petitioner with regard to the admission process of various countries like the UK, Canada, Australia and Russia, which would manifestly make it evident that there are no negative marks for incorrect answers. For better appreciation, the system followed in those countries and also the CMC, Vellore, is

extracted hereunder:

(i)The UK Clinical Aptitude Test Scoring and Marking: The UKCAT is marked on the number of correct answers. There is no negative marking for incorrect answers. The performance on one item does not influence the other. As the number of questions varies between the four cognitive subjects, it is not possible to directly compare the raw scores between these subtests. Raw scores are therefore converted to scale scores that share a common range from 300 to 900. A total scale score is generated by summing the individual scale scores of Verbal Reasoning, Decision Making, Quantitative Reasoning and Abstract reasoning. In 2018 a total scale score ranges from 1200 to 3600.

(ii)Medical Council of Canada Evaluation Examination: The total MCCEE score is reported on a scale from 50 to 500. Every MCCEE question is assigned a difficulty level. The total score takes into account each question's difficulty level as well as whether or not, answered the questions correctly. The points are not deducted for incorrect answers. So, we should always make a 'best guess' even when we are unsure. MICCEE subscores are presented graphically to indicate the relative

strength and weakness in the interrelated areas.

(iii)**The Under graduate Medicine and Health Sciences Admission Test, Canada:** The eligibility Criteria for the students who have completed their secondary schooling or are in the final or test year of secondary or higher (Year 12 in Australia and year 13 in New Zealand) are eligible for the UMAT. Any medical student or a qualified health professional can also appear for UMAT, only if he/she takes a prior permission. All the questions carry equal marks and no marks are deducted for a wrong answer.

(iv)**MCI Rules and Regulations for MBBS IN Russia:** The scheme of examination for Foreign Medical Graduate Screening Test (FMGE) is that

- 1.The test consists of one paper, comprising 300 multiple choice questions.
- 2.The examination shall be a multiple choice question test delivered using computer network as per prescribed scheme.
- 3.There shall no negative marking.

(v)**Christian Medical College, Vellore:** There is no negative marking and hence, at times it may be worthwhile making an intelligent guess. That choice is for the students, who have to decide how close they

are to the options. So, if the students, who have some knowledge of the question and are able to eliminate one or more of the possible answers, their chances of guessing the correct answer increase. It may be to their advantage to attempt such questions.

Thus, when the most developed countries do not follow the system of negative marking, this Court is unable to fathom as to why the method of negative marking is followed by the CBSE.

13. It is the specific case of the learned counsel for the petitioner that every wrong answer would not be a guess and negative marking would not solve the guessing problem. According to her, it cannot be presumed that all wrong answers are the result of guessing and she stoutly opposed the system of negative marking to eliminate guessing behaviour. She further submitted that various studies have pointed out the limitations of such a scoring system broadly on the basis of two aspects viz., (i) Authenticity and (ii) Fairness; in addition, the negative marking is overtly simplistic, because it assumes that every wrong answer is a guess; and hence, the CBSE is patently wrong in arriving at such a conclusion.

14. Such stand of the learned counsel for the petitioner was

seriously opposed by the learned Standing Counsel for the respondents. According to him, the negative marking system is followed in competitive examination only to filter the diligent and deserving candidates for admission to the professional courses, as such, the candidates do not answer the questions by guessing.

15. In the considered opinion of this Court, the study materials of the various countries will support the view that negative marking will not help a student to think rationally. In other words, negative marking does not allow a student to develop an element of guessing. Intelligent guessing is an art. It is very useful in our life. One cannot be sure about all things at all times. An individual will come across a situation, where he/she has to decide an issue not merely based on his knowledge, but with little guessing. Wild guessing is another type of guessing. While intelligent guessing requires an amount of prior knowledge on the subject, wild guessing is the decision taken just like that. In a competitive examination, the students come prepared with varied degree of preparation. As such, when a student is not sure about the answer, he/she attempts to take intelligent guessing. This type of

intelligent guessing should be permitted and encouraged, as it would help the students in their future life, whereas, the attempt of CBSE in awarding negative marks would totally eradicate the habit of intelligent guessing. The CBSE expects a student to know all the answers and be confident while taking the examination. This cannot be expected from all the students. Therefore, negative marking acts only as a bolt in the brain development of the students.

16. It is also acceptable that confidence assessment will be helpful to the teacher to know the firmness of the students in the answers they are giving. But, it has to be borne in mind that the students may tend to exaggerate if they are asked to commit themselves to show their confidence. Sometimes, they may not get a chance to show what they can do. The most they require is a way for them to indicate the firmness of their answers for accurate assessment of their own performance. Thus, a correct procedure has to be adopted to know the accurate assessment of their performance in the tests and the accurate assessment cannot be done by just putting down random numbers for the confidence ratings.

17. The multiple choice tests are meant to assess the knowledge

and nothing else. It is not supposed to be concerned about behavioural/attitude related aspects of the examinee. It is also known that the students differ in their guessing behaviour. Some students dare to take more risks than others. The negative marking introduces concern about students' risk taking attitude which is unrelated to skill or knowledge level of the student. Furthermore, there is no method available with the CBSE or with any other agency to distinguish from guessed correct answer and a known correct answer. It is compounded by their inability to distinguish between an omission deriving from ignorance and deriving from risk aversion. Whenever proven knowledge is considered important, creativity and innovations are equally considered important.

18. In this context, Albert Einstein stated, "Imagination is more important than knowledge". When knowledge denotes accumulation of proven facts, imagination explores the areas of disproving the existing belief and paving paths to new world. Imagination is the mother of all inventions and discoveries. Without imagination, there is no creativity. The urge to create something new or develop something new, comes

from imagination. In short, imagination is the seed for all the man made developments, on this planet. The threat of negative marking attempts to crush the bud of imagination. Success and failures are like two sides of the same coin. Therefore, a student should be taught to face mistakes and failures and see it a part of life.

19. By awarding negative marks, the intuition of a student is crippled. Every one comes across a situation in life where decisions are taken purely out of intuition. It may work or may not, but, an element of boldness comes along, while making a decision through intuition. The threat of negative marks will never allow intuition to grow in a student.

20. What is different from negative marking is that the students will no longer lose points, if they answer a multiple choice question wrongly, but will have to answer more than half the questions correctly to pass the examination. It could be achieved through standard setting, by adopting various factors. Instead of awarding negative marks, the number of alternatives in each question from which the candidates have to choose the correct answer, can be increased. This may be done by

increasing the questions, so as to arrive at the solutions.

21. Thus, as rightly argued by the learned counsel for the petitioner, the very system of awarding negative marks is improper and against the principles of fairness, equality and equity. Students, who take part in competitive examinations, come from different strata of society. Those hailing from affluent families, can afford to take private coaching and enhance their knowledge and techniques and the same cannot be expected from meritorious students coming from economically weaker background. There has to be a level playing field in examination in general, especially in competitive examination. Negative marking acts a weight behind the mental strength of a student and the student approaches every question with an element of fear. He/she has to be doubly cautious, while choosing the answer for the question. In other words, a student has to be confident about the answer. Such confidence of knowing each and every answers cannot be expected from the students, meritorious or otherwise. If there is no negative mark, the students are given an opportunity to take a wide thinking and apply intelligent guessing. This practice of taking an intelligent guess indeed,

develops the brain of a student and builds his/her confidence to tackle any situation in future.

22. This Court is in agreement with the submission made by the learned counsel for the petitioner, on the basis of the materials placed that there is no scientific proof in support of negative marking system that it helps to choose best candidates from the competitive examination. As already stated, most advanced countries like the UK, Canada, Australia and Russia have stopped the practice of negative marking. Even in India, the renowned CMC, Vellore, one of the best colleges in the field of medicine, does not award negative marks in their entrance examination for admission to medical college. Therefore, this Court is of the considered opinion that the system of negative marking in no way, helps the examiner to analyse the intelligence, aptitude or knowledge of the students in any manner. As such, this Court has no hesitation to hold that the system of negative marking has to be done away with, inasmuch as, in the considered opinion of this Court, the same perforce requires reconsideration.

23. On 30.01.2019, it was brought to the notice of this Court by the

learned standing counsel for the respondents that the respondents herein are no longer the authorities concerned qua the subject matter in issue and the authority concerned is only the National Testing Agency, Department of Higher Education controlled by Human Resources Department. The said submission is recorded.

24. In view of the aforesaid discussion and subsequent development recorded above, this Court directs the respondents herein to communicate the order of this Court to the competent authority for taking further course of action.

25. With the above direction, this writ petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
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01-02-2019

Note: Issue on 04.02.2019

To

1. The Executive Director,
Central Board of Secondary Education
J.E.E (Main) Secretariat,
PS-1-2 Institutional Area, IP Extension,
Patparganj, Delhi - 110 092.
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