



WEB COPY

W.P.(MD) No.13495 of 2020

T.Kavinraj v. Union of India, Ministry of Human Resource and Development, New Delhi

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
13.10.2020	14.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD)No.13495 of 2020

T.Kavinraj

... Petitioner

-vs-

1.Union of India

Represented by its Ministry of Human Resource and Development
Shashtri Bhavan, Rajendraprasad Road,
New Delhi 110001

2.The Department of Higher Education,
Ministry of Human Resource Department
Government of India,
Shashtri Bhavan, Rajendra Prasad Road,
New Delhi 110001.

3.The National Testing Agency
Having office at Block C-20/1A/8
Sector 62
Gowtham Budh Nagar,
Noida

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents 2 and 3 to display the provisional answer keys for the drawing test part III paper of B.Arch admission conducted for the JEE(MAIN) April 2020 forthwith and also to facilitate the petitioner/candidate to have the answer key and the responses and also to have a choice of challenging the marks awarded in drawing test Part III B.Arch selection for the year April 2020.

For Petitioner : Mr.Veera Kathiravan, Senior Counsel
For M/s.Veera Associates
For R1 & R2 : Ms.L.Victoria Gowri
Asst. Solicitor General
For R3 : Mr.Karthick
Standing counsel

<https://hcservices.ecourts.gov.in/hcservices/>



O R D E R

The writ petition has been filed for a direction to the respondents 2 and 3 to display the provisional answer keys for the drawing test part III paper of B.Arch admission conducted for the JEE(MAIN) April 2020 forthwith and also to facilitate the petitioner/candidate to have the answer key and the responses and also to have a choice of challenging the marks awarded in drawing test Part III B.Arch selection for the year April 2020.

Brief Facts in nutshell:

2. The petitioner, after completing his Higher Secondary Course, applied for the Joint Entrance Examination (JEE) (MAIN) 2020, conducted by the respondents 2 and 3 for admission to Indian Institute of Technology for the course of B.E., B.Arch., and B.Planning. The 3rd Respondent is the authorized/Nodal agency for conducting the said JEE eligibility Examination and he, accordingly, attended the two examinations conducted in January 2020 and April 2020 and secured 96.65 and 95.98 marks respectively in three papers, namely, Part I to Part III. Though he has secured good marks, since the part III answer key has not been published, he is deprived of his right to challenge the same and hence, he is before this Court with the present writ petition.

2.1. The petitioner drew the attention of this Court to Page No.2 of the Information Bulletin, wherein, in the mode of examination, three different papers were prescribed in respect of B.Arch, namely, Part (I) to (III). The main grievance of the petitioner is that the mode of examination for Part-III is "pen and paper based" (offline) mode to be attempted on drawing sheet to test the drawing aptitude of candidates, for which, there is no key answer.

2.2. According to the petitioner, in Page No.11 of the Bulletin, it has been categorically mentioned that the 3rd respondent would display provisional answer keys and question paper on their Web site. Even though the petitioner has performed well and has scored more marks in the examination held in January 2020, the challenge in this writ petition is to the examination conducted in April 2020. According to him, if the candidates are not satisfied with the answer keys and recorded responses, they may challenge the same by filing online application form by paying a processing fee of Rs.200/- per question. The expert will examine all the challenges received and then a final answer key will be displayed and declared. Admittedly, for part III, there are no guidelines stipulated for awarding marks, more particularly, in stages. The entire answer cannot be said to be bad on account of a small mistake crept in in the drawing and if a portion of the answer is found to be correct, minimum marks should be awarded. It is stated by the petitioner that as there are no guidelines and there is no key answer for the



drawing, the entire selection process is bad and the relief sought for in this writ petition should be granted.

2.3. It is the case of the petitioner that the powers cannot be conferred to the 3rd respondent to testify the merit and ability of candidates, as certain guidelines have been specifically prescribed in the prospectus. Though the petitioner has not questioned the system of evaluation, he questioned the non prescription of key answer in the prospectus with regard to Part-III, namely, drawing and in the absence of key answer in the prospectus, the third respondent cannot have his own way of correction and allotment of marks to those drawing paper. It is his case that when it is an admitted fact that there are no key answers, the contention in the counter affidavit that if the drawings made by the candidates are verified by two independent subject experts and if the marks given by the two independent experts/examiners differ by more than 25%, it has to be again placed before the Head examiner/experts for scrutiny. This would mean that the entire process of allotment is given to an independent agency, which is not prescribed under the prospectus. Hence, it is the petitioner's case that the writ petition needs to be allowed as prayed for.

3. Ms.L.Victoria Gowri, learned Assistant Solicitor General of India, contended that the writ petition is not at all maintainable in terms of the conditions contained in the prospectus with regard to legal jurisdiction, which is extracted hereunder:

"All disputes pertaining to the conduct of January JEE (Main)-2020 Examination including Results shall fall within the jurisdiction of Delhi only. The Senior Director (Admin) of the NTA shall be the official by whose designation the NTA may sue or be sued."

3.1. According to her, the Court situated at Delhi alone has got jurisdiction and this Court has no jurisdiction to entertain the matter. She has stated that the mode of examination prescribed for B.Arch., more particularly, Drawing Test - Part III is by way pen and paper based offline mode to be attempted on Drawing Sheet. Since such conduct of examination is offline mode, the key answers will not be available and that the petitioner cannot insist that there should be a guideline for the experts to award marks in stages. The prospectus cannot be read in isolation and when there are no key answers for the drawing paper, nobody can question as to the allotment of marks to candidates and no one can also insist that the key answer should be published for the subjective paper. The respondents have already appointed experts for correcting the answers as well as for the purpose of allotment of marks.

3.2. The learned Assistant Solicitor General contended that when the petitioner participated in the previous examinations in the month of January 2020, there was no key answer for the subjective



paper and therefore, the petitioner is aware of the full system of conduct of examinations. The evaluation of drawings is being verified by two subject experts independently and if the scores differ by more than 25%, they are scrutinized by a head expert/examiner and if the difference between the raw marks given by the two examiners is less than 25%, then average is taken.

4. It is further stated by the learned Assistant Solicitor General that the examination is conducted throughout India and that National Testing Agency is established by the Ministry of Human Resource Development, which is an independent and autonomous and self sustained premier testing organization under the Societies Registration Act, 1860 for maintaining efficiency, transparency and international standard in order to assess the competency of candidates for admission to premier higher education institutions. She reiterated that since Delhi Court alone has got jurisdiction, the writ petition has to be dismissed in *limine*.

5. Mr.Karthick, learned standing counsel appearing for the third respondent, while adopting the submissions taken by the learned Assistant Solicitor General, submitted that for the subjective paper, no answer key is provided and that there cannot be any allotment of partial marks for every stage of drawing. He further submitted that answer sheets are assessed by two Independent Subject Experts / Examiners and the assessment, if differs by more than 25%, is placed for scrutiny before the Head Expert / Examiner. The process of dual verification is practiced in order to curb the possibility of incorrect assessment and prepare the result in a fair and transparent manner. He also drew the attention of this Court to Paragraph Nos.16 & 17 of the 3rd respondent's counter to contend that drawing sheets / answer sheets are evaluated by the Subject Experts and raw marks are awarded and then the same is converted into the NTA scores in percentile. The 3rd respondent relies upon the process of evaluation and finalization by the Subject Experts and the raw marks awarded thereof are then converted into NTA scores in percentile and the result is declared. Mr.Karthick, learned standing counsel further went on to contend that even in JEE (Main) 2019, provision answer keys of Paper-I and Paper-II were declared on the Official Website by the 3rd respondent and the contention of the petitioner that the 3rd respondent is not following and implementing its own information bulletin is not correct.

6. In reply to the contentions of the learned Assistant Solicitor General of India and learned standing counsel for the third respondent, Mr.Veera Kathiravan, learned Senior Counsel, submitted that the main plea advanced by the learned Assistant Solicitor General that this Court has no jurisdiction, is not correct, as the territorial jurisdiction will apply only to civil Courts, and Article 226 of the Constitution of India is conferred with unfettered powers, especially when the petitioner has taken up



the examination from Tamil Nadu. He further submitted that the Constitutional jurisdiction cannot be regulated by the third respondent. There is an admission that there is no answer key for the drawing test in B.Arch and that answer is evaluated only by the private expert. When there are no guidelines for awarding marks, which is absent in Page No.11 of the Bulletin with regard to this subjective paper, there are chances for malpractices in the process of selection and hence, the relief sought for by the petitioner should be granted and the contention of the respondents have to be rejected in limine.

7. Heard the learned counsel for the respective parties and perused the material documents available on record.

8. Admittedly, the petitioner has participated in the examination conducted in the month of January 2020 and scored more marks. Subsequent thereto, he scored lesser marks in the examination conducted later and therefore, it is crystal clear that he is aware of the procedures for allotment of marks. If the relief sought for by the petitioner is granted, it will amount to multiplicity of litigations and the attempt to change the rank list at the 11th hour, will definitely create a great repercussion throughout India and the entire exercise of conduct of examination would be a futile one, more so, when the petitioner has no *locus-standi* to question the mode of examination and he was aware of the subjective paper on account of his participation in the earlier examinations conducted in January, 2020 and the same yardstick has been followed currently.

9. Taking note of the submissions made on either side, I find much force in the contention of the Respondents 2 and 3 and it is to be noted that since a common test has been conducted throughout India and examinations for Drawing (Part-III) had already taken place, which is a subjective paper, there is no need to award marks in stages. The request of the petitioner in respect of award of marks in stages reminds me of the dialogue of great Comedy Actor Nagesh with Sivaji Ganesan (as Lord Siva in disguise) in the Tamil Movie "Thiruvilaiyadal", whereby Dharmi (Actor Nagesh) would request Nakkeerar, a poet for reduction of gold according to the number of mistakes in the poem. In the said movie, the request of Dharmi was not accepted and in this case also, the request of the petitioner to award marks to those portions of correct answers in part / stages, is declined.

10. Moreover, for the drawing test subjective paper, there is no need for uploading key answers in the Website. It has been clearly pointed out by the respondents that all the answers written by the candidates will be scrutinized by experts and two experts are independently examining the answer papers and in case there is a difference of 25% as stated supra, the average marks scored by the



candidates will be taken into consideration.

11. This Court is not inclined to accept the submission put forth by the petitioner, as it would amount to opening a Pandora Box and in the considered opinion of this Court, the prospectus does not suffer from any serious infirmity or *lacuna* and non furnishing of answer keys in the Website for the subjective test will not dilute the selection process and the respondents are perfectly justified in proceeding with the same, more particularly, in the light of the guidelines issued in the notification/bulletin. Except wishing the candidate "ALL THE BEST" to come out with flying colours in the forthcoming examinations, this Court cannot grant the relief in this Writ Petition. Accordingly ***the same is dismissed***. As this Court has dismissed the Writ Petition on merits, this Court has not gone into the question of jurisdiction raised by the learned Assistant Solicitor General of India. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-20121[F] dated 15/10/2020)

+1 CC to M/s.L. VICTORIA GOWRI, Advocate (SR-20404[F] dated 16/10/2020)

W.P. (MD) No.13495 of 2020 and
W.M.P. (MD) No.11251 of 2020

Dated:

14.10.2020

sgs (CO)

KK(16.10.2020) 6P 3C

<https://hcservices.ecourts.gov.in/hcservices/>