

ITEM NO.61

COURT NO.2

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.456/2017

BALARAM VISHNU SUBRAMANI

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

WITH W.P.(C) No.469/2017 (X)

(With appln.(s) for stay and exemption from filing O.T.)

W.P.(C) No.498/2017 (X)

Date : 10-07-2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s) Mr. S. Thanka Sivan, Adv.
Mr. Vivek Singh, Adv.
Ms. Udita Singh, AOR

WP 469/17 Mr. Kapil Sibal, Sr. Adv.
Mr. Kumar Kartikey, Adv.
Mr. D. K. Devesh, AOR
Ms. Neelam Sharma, Adv.
Mr. Hitesh Vats, Adv.
Ms. Archana Sharma, Adv.
Ms. Neelu Sharma, Adv.
Mr. Himanshu Singh Dhillon, Adv.
Mr. Sumit Saddi, Adv.
Mr. Maibam N. Singh, Adv.

WP 498/17 Mr. Sanjay Hegde, Sr. Adv.
Mr. D.K. Devesh, AOR
Mr. U.P. Singh, Adv.
Mr. Hitesh Vats, Adv.
Mr. Shashank Singh, Adv.

Mr. P.B. Majumdar, Sr. Adv.
Mr. Kumar Kartikay, Adv.
Mr. D.K. Devesh, AOR
Mr. Narendra Hudda, Sr. Adv.
Mr. Kumar Kartikay, Adv.
Ms. Neelu Sharma, Adv.

For Respondent(s) Mr. K.K. Venugopal, AG
Ms. Sonal Jain, AOR
Mr. Arjun Mitra, Adv.
Ms. Heena Sharma, Adv.
Mr. Kuldeep Singh, Adv.

Mr. Tushar Mehta, ASG
Mr. Vipin Kumar, Adv.
Mr. Rajat Nair, Adv.
Ms. Rukhmani Bobde, Adv.
Mr. Deepak Goel, Adv.
Mr. Vijay Prakash, Adv.
Mr. G.S. Makker, AOR

UPON hearing the counsel the Court made the following
O R D E R

Regard being had to the commonality of the issue involved despite some variance, we are dealing with these writ petitions together for the present.

For the sake of convenience and clarity, we are taking facts from Writ Petition (C) No.456 of 2017. The writ petitioner has prayed for issue of a writ of mandamus calling for the records relating to revised answer keys for the JEE (Advanced) 2017 examinations published by the 2nd respondent on 13.06.2017 in their official website and set aside the same in so far as the awarding of +3 marks to all candidates in Chemistry Question No.29 in Code-I Paper-I and +4 marks to all candidates in Mathematics question No.39 in Code I Paper I and all the corresponding questions in all Codes 0 to 9, and further to issue a writ of mandamus commanding the respondents to revoke the 7 free marks awarded to the candidates of JEE Advanced 2017 whose question papers were printed correctly and they had not attempted the questions and award negative marks as applicable in case attempted wrongly and to republish the results of JEE Advanced 2017, and further direct the respondents to publish the revised All India Rank list.

It is contended in the writ petition that though

certain questions were framed erroneously, yet it had correct answers and some students have given the appropriate answers. It is urged that the respondent No.2, in an arbitrary manner, decided to grant the requisite marks i.e.18 to all the candidates because the expert body felt that the mistake could be best remedied in the said manner.

In the counter affidavit, it is averred that the respondent No.2, discovered printing inconsistency and to resolve the said issue in a manner that would be uniform and provides equal treatment to all the candidates in a most equitable manner, it adopted the methodology to grant the entire marks for the questions to each candidates so that there would be no discrimination and for the said purpose opinions of two expert bodies were obtained. The relevant paragraphs of the counter affidavit read thus:-

"14. The PAN-IIT expert committee deliberated extensively on the evaluation criteria to be followed for these two questions. To ensure that (a) the final decision is in the best interest of every candidate, (b) consistently applied across all such (ambiguity/inconsistency) regardless of paper code and language, thereby ensuring that there is no possible disadvantage to any candidate, it was decided to award additional 7 marks to all candidates corresponding to these questions. This has ensured that the playing field is level and that no candidate is prejudiced on account of the printing inconsistencies.

15. That the decision to award these marks was taken by the experts after considering all the possible outcomes. Insofar as Q.39 of code 1 and corresponding questions in all codes of HINDI (+ Marks for all right choices, +1 for each right choice if attempted, 0 for no choice made, -2 marks for wrong choice) is concerned, several proposals were discussed to address this misprint before the PAN IIT meeting on 9th June, as outlined below:-

a. Possibility of separate evaluation of

HINDI version: It was suggested to evaluate the ORS of the candidates with Hindi language separately. However, the ORS for both sets of candidates are the same without any distinction. It was also noticed that there were requests of change of language of question paper even a few days before or in the examination hall at the start of the exam/distribution of question paper. Therefore, a set of Hindi question papers is sent along with English question papers to all the exam centres for any candidate who may ask for a language change even at the last moment. This is done to help candidates who find English version to be difficult. As the ORS is the same for both the Hindi and English versions of same coded question papers, the evaluation is not affected by the choice of the language of the paper (provided that the question papers are free of discrepancies).

c. Disadvantage to English version even if the negative marking is removed: Due to printing differences in the Hindi version of the question, all the four choices (A, B, C, D) became correct, while in the English version only 3 choices (A, C, D) were correct. If marks are awarded for those who attempt the question, in the English codes if a candidate chooses B, he loses 2 marks due to negative marking, but in Hindi, the candidate gets 1 Mark. Even if the negative marking is removed from the question, the Hindi version gets an advantage of 1 mark."

In addition, it has further been asserted thus:-

16. That insofar as Q.30 of code 0 of Hindi (+3 marks, 0 marks for wrong answer, Q.29 of code 1) is concerned, the following considerations led to the decision:-

a. This was a Numerical type question requiring the candidate to fill a bubble that would be read as a number for the answer. The statement of the question was printed differently in Code 0 of Hindi version and did not include a molecular species of "H₂", thereby making the question different from the question in other codes of Hindi and all codes of English language.

b. Since the papers codes are distributed randomly on the day of the examination, treating one paper code differently from the other would present a lottery-like situation for students, with some students having a chance to score +3 with different questions in different sets due to printing differences."

It is submitted by Mr. Kapil Sibal, learned senior counsel appearing for the petitioners that the students who had given the answer of the question correctly, have got less marks than the students who had not attempted the answers correctly, for they have been awarded more marks. According to him, more meritorious candidates have been ranked below the candidates, who would ordinarily secured less marks. He has filed a graph in that regard.

Learned counsel appearing for the respondent No.2, *per contra*, would submit that there may be some anomaly at some place or other, but the dichotomy being in existence, the only way of rationalization was to award bonus marks for all the questions.

At this juncture, Mr. Tushar Mehta, learned Additional Solicitor General appearing for the Union of India would submit that at present this Court should not pass any interim order and, in fact, should vacate the order that was passed on the previous occasion. We have been apprised that 33,307 students have been admitted and their fees have been accepted.

Be it noted, on the earlier occasion, that is, 7th July, 2017, the following order was passed:-

"Heard Mr. Vikas Singh, learned senior counsel along with Mr. D.K. Devdar and Mr. S. Thankasivam, learned counsel appearing for the petitioners and Mr. K.K. Venugopal, learned Attorney General for India being assisted by Mr. Ankur Talwar, learned counsel appearing for the

Union of India.

Having heard learned counsel for the parties, we are inclined to direct as follows:

(a) No counselling or admission to the Seats in IIT JEE (Advanced), 2017, shall take place until further orders.

(b) No High Court shall entertain any writ petition from today concerning the subject matter of this writ petition.

Let the matter be listed on 10.07.2017 along with the connected matters.

A copy of the order passed today be sent to the Registrar General of each of the High Court.

Registrar General of each of the High Court is directed to intimate this Court by 8.7.2017 about the nature of cases pending in relation to IIT JEE (Advanced) Examination, 2017, and the number of petitioners involved therein."

On that day, Mr. Vikas Singh, learned senior counsel has drawn inspiration from a three-Judge Bench decision in Guru Nanak Dev University vs. Saumil Garg and Others (2005) 13 SCC 749. Learned senior counsel had placed emphasis on paragraph 12, which reads as follows:-

"There is yet another problem, namely, that of seven questions which are so vague that they are incapable of having a correct answer. The appellant University, in respect of those seven questions, has given the credit to all the students who had participated in the entrance test irrespective of whether someone had answered the questions or not. We do not think that that is the proper course to follow. It is wholly unjust to give marks to a student who did not even attempt to answer those questions. This course would mean that a student who did not answer say all the seven questions would still get 28 marks, each correct answer having four marks. The reasonable procedure to be followed, in our opinion, would be to give credit only to those who attempted the said questions or some of them. Having regard to the circumstances of the

case, we direct that for the students who attempted those questions or some of those questions, insofar as they are concerned, the said questions should not be treated to be part of the question paper. To illustrate, if a student answered all the said seven vague questions, insofar as that student is concerned, total marks would be counted out of 772 i.e. 800 less 28 and likewise depending upon number of such questions, if any, answered by the student. The seven vague questions are Question 4 in Physics, Questions 76 and 89 in Chemistry, Questions 147 and 148 in Botany and Questions 156 and 163 in Zoology of Question Paper Code A."

It is submitted by Mr. Tushar Mehta, learned Additional Solicitor General that the said decision could not be applicable to the case at hand. Learned counsel for the respondent No.2 would submit that there was no provision for negative marking for incorrect answer in Guru Nanak Dev University case (supra). We find that in the reported decision there was no stipulation that if a candidate attempted a question wrongfully, there would be negative marking. That apart, only ten thousand students appeared in the concerned examination. In the present case, as Mr. K.K. Venugopal, learned Attorney General for India would submit, on obtaining instructions, that 1,56,000 students actually appeared in the examination. In such a complex exercise, to apply the decision of Guru Nanak Dev University case (supra) would not be apposite and, in our considered opinion, the said decision is distinguishable.

This being the position, we are inclined to vacate the order passed on 7th July, 2017, and we so do. Our vacating the order clearly conveys that we are not inclined to interfere. If any matter is pending before any High Court, the same shall not be entertained to avoid any kind of confusion.

After saying so, we would have proceeded to dismiss the writ petition, but the desire of this Court is that such kind of error/mistake, whether printing or framing of questions should not occur in future. Mr. K.K. Venugopal, learned Attorney General, Mr. Tushar Mehta, learned Solicitor General of India and Mr. Sonal Jain, learned counsel appearing for the respondent No.2, shall apprise us with regard to an apposite foolproof mechanism by which no mistake shall take place in future.

Mr. Bhaskar Ramamurthy, Chairman, JAB-2017, is present in the Court and has assured that he will see to it that mistakes shall not occur. When we say, foolproof mechanism, it means with regard to setting of question papers, so that no student would have any grievance and question of granting any bonus marks would never arise.

The counselling that was stopped by virtue of the order of stay, shall continue and, if required, the respondent No.2 is permitted to reschedule the dates for counselling. The said information shall be put on the official website of the respondent No.2.

List the matter on 10th October, 2017, to enable the respondent No.2 to file the requisite report which shall clearly show foolproof mechanism.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master