HIGH COURT OF GUJARAT (*D.B.*)

MAULIK VINODKUMAR MAKWANA
Versus
STATE OF GUJARAT

Date of Decision: 10 July 2002

Citation: 2002 LawSuit(Guj) 496

Hon'ble Judges: J N Bhatt, Kundan Singh

Eq. Citations: 2002 2 GHJ 682

Case Type: Special Civil Application

Case No: 4535 of 2002

Final Decision: Petition dismissed

Advocates: Nanavati Associates, Kamal Trivedi, L R Pujari, A D Oza, A M Panchal, Ajay Mehta, D D Vyas

Cases Referred in (+): 4

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[1] Whether the phase-wise holding of examinations of Higher Secondary (12th Std.) Science Stream by Examination Board, on account of unfortunate and unprecedented riots, in the State of Gujarat, would affect the merits and evaluation of the examination papers and affect the prospects for admissions in professional courses since Higher Standard Examinations are 'Qualifying Examinations' for such courses and, also, whether, in such situation, an alleged classification will be created or not, whether examination taken on different occasions would create discriminatory treatment to alleged unequals as they are treated as equals, warranting phase-wise 'Merit-List', which, hitherto, has been, only, one 'Merit List', in terms of the provisions of the Higher Secondary Examination Regulations and provisions and practice and, if yes, whether it would be expedient or incumbent upon us by a judicial-review to direct phase-wise 'Merit Lists', are the material and main interesting and significant questions requiring our considerations and adjudication in this writ petition filed by the petitioners invoking aids of Article 226 of the Constitution of India.

[2] A conspectus of relevant and material facts giving rise to the present petition, needs narration, at the inception so as to appreciate merits and challenge against the

petition on hand.

[3] The petitioners are the guardians of the students appeared in the Science Stream Examination, on 18.3.2002 (First- Phase) which had been conducted by the respondent No.2, Gujarat Secondary Education Board, a Statutory Board, under the Gujarat Secondary Education Act, 1972. The respondent No.4 is an association of parents. It is the case of the petitioners and the respondent No.4 that the members of the said association are residing in different cities of North Gujarat and the object of the said association is to redress the grievances of their children who appeared in the 12th Standard Science Stream examination for the academic year 2001-2002. The respondent No.4 Association, thus, is supporting the cause of the petitioners, whose legal status, size, number of members, basis on which it is constituted, etc. are not precisely known from the record. An application being Civil Application No.3820 of 2002 is filed on behalf of two other Parents' Associations since they are also supporting the petitioners on the same grounds raised by the petitioners and the respondent No.4, Parents' Association. Therefore, on merits of the request of that application of two associations for being impleaded in absence of material particulars about the registration, size of the membership and the objects or written constitution, etc. in minute details, the learned advocate appearing for the applicants is, also, heard, who is supporting the cause of the petitioners, without permitting them to be impleaded, in the larger interest of justice without going into their legal status and competence.

[4] It is a common case that the petitioners and the students who appeared in the first phase of examination of Higher Secondary, in so far as, Science stream is concerned, have suffered injustice, as respondent No.2, Board, and the respondent No.3, Director of Examination have created inequality between the students appeared at the Higher Secondary Examination in Science stream, on 18th March, 2002 (first phase examination) for the area other than the city of Ahmedabad, Baroda and Godhra and the students who appeared at the examination on, 18th April 2002, for the city of Ahmedabad, Baroda and Godhra. It is their contention that, therefore, they are discriminated and they have suffered injustice which has adverse impact on their prospects of entry into professional courses as it is regulated by only one 'Merit-List', and not phase-wise examinations, two Merit-Lists. In support of their claim, the petitioners have given statistics and figures referable to the outcome of the examination and the marks. It is, therefore, contended that the Higher Secondary Science Stream examinations are taken with a view to procure talented students for professional courses like, medicine, engineering, etc. and the phase- wise examination approach would result into injustice if only one 'Merit-List' is prepared for all instead of 'Merit-List' as per the phase-wise examinations.

[5] The petitioners have, therefore, sought to challenge the alleged injustice caused to the students in view of the phase-wise examinations by respondent No.2, Gujarat Secondary Education Board (Board) and the respondent No.3, Director of Examination of the Board (Director), between the students appeared in 12th Std. Science Stream Examination, on 18th March, 2002, for the areas other than the cities of Ahmedabad, Baroda and Godhra and the students who appeared at the examination on 18th April, 2002 for the cities of Ahmedabad, Baroda and Godhra. It is the contention of the petitioners that because of phase-wise examinations and only one 'Merit-List' has caused inequality and discrimination, inter-se the students, requiring judicial intervention. It may be, also, noted that during the course of hearing, it was jointly submitted that third phase examination was conducted on 3rd June, 2002 and the results are, also, declared by now. For the purpose of admission in the professional courses in Gujarat, unlike, many other states, where competitive examinations are conducted, higher secondary certification examination (science stream) or the post basic stream under the 10 + 2 education pattern conducted by the Board or Central Board of Secondary Education, New Delhi, or Council for the Indian School Certificate Examination, New Delhi, taking physics, chemistry, biology, mathematics and English from any of the recognized institution located in Gujarat State, has been the qualifying examination. It is in this context, the main thrust and theme of the petition is that the phase-wise examinations have caused inequality and discrimination resulting into injustice to some of the students in securing admission in professional courses, since the higher secondary stream is a qualifying examination and not only one mark, but even a fraction of it, has vital effect and impact on the admission criteria.

[6] It is, therefore, contended by the petitioners that two 'Merit Lists' instead of one will redress the injustice caused to them. As stated, hereinabove, figures and the percentage of marks received by different phase-examination students have been relied on and some of them have been articulated in the petition. Representation has also been made to the respondent authority for the redressel of their grievances in this behalf, which has not been replied so far, as per the case of the petitioners. It is not known as to how and why it has remained unattended and undecided from the record.

[7] We have examined the entire record, dispassionately and threadbare. We have, also, heard the submissions offered by the learned counsel appearing for the parties in course of the marathon hearing, with full of circumspection. The case law relied on is, also, considered and examined carefully by us.

[8] Affidavit in reply has been filed by the respondent No.2 Board, which has been adopted by respondent No.1 and 3. Respondent No.4, North Gujarat Parents Association, appearing through its lawyer has supported the case of the petitioners,

whereas, respondent Nos.5 to 7, students through guardians have opposed the case and the contentions propounded on behalf of the petitioners.

[9] We have, also, been taken through the relevant provisions of Higher Secondary Certificate Examination Regulations, 1977, and the Rules and Application Form for admission to professional and technical courses on the basis of qualifying examination, in course of the hearing. There is no dispute about the fact that the preparation of 'Merit-List' for the purpose of admission in various professional and technical courses is based on the qualifying examination of higher secondary streams and it is the domain of different centralised admission Committees for different professional and technical courses.

[10] We have seen the rules for procedure for admission to MBBS, BDS, B.Physio, Engineering and Pharmacy, degree and diploma courses. There is, also, no dispute about the fact that eligible candidate has to apply for admission to the first year of such courses in a prescribed form addressed to the Chairman of the respective Central Admission Committee. Upon such prescribed application forms with necessary and material and relevant required particulars and documents are submitted, they are examined and verified, and 'Merit-List' for the purpose of admission to respective courses based on marks-percentage in such Qualifying Examination in order of merit is prepared.

[11] Each application is, also, given registration number on his/her application. Such registration number, obviously, will be used as reference in all future correspondence and, also, at the time of publication of 'Merit-List' and pronouncement of admission. The further process, for the purpose of admission prescribed in the rules is not necessary for the purpose of determination of the merits of the petition, on hand and, therefore, it would not be necessary to probe it any further. Suffice it to say, that the 'Merit- List' is prepared by each Centralised Admission Committee with a Chairman as the head of the Committee constituted for the purpose of preparing 'Merit-List' and admission.

[12] Now, the controversy revolves round the preparation of second 'Merit- List' or phase-wise examination 'Merit- Lists'. Since it was not clear in the petition as to whether the common 'Merit-List' for the entire admission process for all the courses is prepared or different 'Merit- Lists' are prepared for different courses in colleges, we thought it expedient to undergo the exercise to ascertain and consider the relevant provision and the entire procedure for preparing the -'Merit- List'. It is, now, a consensual proposition that -'Merit List' is prepared by different Central Admission Committees for respective professional and technical courses in which the qualifying examination is the Higher Secondary Results. Therefore, prima facie, reading the

prayers made in the petition, one would be led to believe that only one 'Merit-List' is to be prepared and the Second Merit List on account of phase-wise examinations for the standard 12th Science Stream is desired and sought with the help of Constitutional provisions under Article 226.

[13] It is prayed that instead of one 'Merit-List', authorities should be directed to prepare two separate 'Merit-Lists' for the students who appeared on, 18th March, 2002, and, those who appeared on 18th April, 2002 in standard 12th Science stream examination, as per the ratio of the students appeared in the two examinations (pro-rata ? or per quota ?). There is no dispute about the fact that third phase examination had, also, been conducted on 3rd June, 2002, and the results of the said third phase examination were also declared. It means that if the proposition and the perception of the petitioners is accepted at its face value, for the sake of arguments, then, in that case, obviously, instead of two 'Merit-Lists', three Merit Lists would be required to be directed for each and every professional courses. Not only that, it would mean that by any emergency, contingency or any unforeseen events or circumstances, more phase-wise examinations are conducted on different dates, then all phases would warrant phase-wise Examination 'Merit-Lists'.

[14] Learned counsel Mr.Nanavati appearing for the petitioners has reiterated the contentions before us which are pleaded in the petition and in support of his submissions, he has, also, demonstrated some data and figures of the results published by the respondent No.2 Board and has, vehemently, urged that a common 'Merit-List' of the students appeared on 18th March, 2002 and 18th April 2002 in the standard 12th Science Stream Examination would be a great injustice and will have, in some cases, a paralytic impact on the careers and future- graphs and prospects of the students. Therefore, it has been repeatedly and vehemently urged that there should a direction to the respondent authorities to prepare two separate 'Merit-Lists' of the students on phase-wise basis who have taken the examination in two phases.

[15] Prima facie, the submissions advance before us would appear to be quite alluring and attractive, but not acceptable and sound when one gets into the reality of the facts emerged from the record of the present case and in absence of material particulars, data and information and the views and opinions of the experts and academicians. The submissions advanced on behalf of the respondent authorities by the learned Additional Advocate General, Mr.Trivedi, who appeared with the learned Assistant Government Pleader, Mr.Pujari, which have been supported by learned advocate Mr.A.D.Oza appearing for respondent Board and learned advocate Mr.A.R.Mehta, who appeared for respondent No.5. Learned advocate Mr.D.D.Vyas appearing for respondents 6 & 7 has also supported the submissions of learned Additional Advocate General.

[16] The main proposition advanced on behalf of the respondent State and supported by other respondents, except respondent No.4, is the non-advisability of interference by this Court in extra- ordinary, constitutional writ remedy in the autonomous sphere of academic policies. The justiciability of the impugned action or commission or omission of the respondent authority under Article 226 can, hardly, be countered. It is, therefore, submitted that the advisability of the interference with the action, decision or policy of the authorities like the respondents, in so far as academic world is concerned, is placed on the focus. No doubt, judicial review means, by which the High Court exercise a supervisory jurisdiction over the inferior courts, Tribunals and other public bodies and authorities. It is a specialised remedy. Undoubtedly, it is a prerogative, extraordinary, discretionary and equitable jurisdiction to be exercised by the High Court, by invoking the aids of the provisions of Article 226 of the Constitution. Action or inaction, commission or omission of educational authorities is not above judicial review, which is one of the basic features of the Constitution of India. However, the extent, ambit and the jurisdictional sweep of such powers are very much circumscribed and more so, when it is to be exercised and used against educational institutions or authorities or autonomous bodies and, again, more so when it pertains to their policy.

[17] It may, also, be noted that judicial review under Article 226 is not to be used and exercised by the High Court as an appellate authority. It is not the quality of the decision or for that matter for any impugned action which is the main concern and the anxiety of the Court. The main anxiety of the Court would be to see whether the decision making process is just and fair or not, and not the product thereof. In order to succeed in invoking such an extra-ordinary relief under Article 226, it is also imperative for the person who raises the plea or the petitioner to prove and establish that such an action or omission has resulted into unreasonableness, injustice or perversity leading to miscarriage of justice. It may, also, be noted further that the constitutional writ jurisdiction is the prerogative of the courts and is not a right, ipso facto, of a person or a party. It is, therefore, time and again, held that such judicial review powers under Article 226 are discretionary and equitable. The question, therefore, would, now, emerge for consideration and adjudication for us is, as to whether the plea of phase-wise examination 'Merit-Lasts' for the purpose of admission in the professional and technical courses based on Qualifying Examination of higher secondary stream, instead of one, is in any way, successfully, shown to be unjust, inequitable, injudicious or any way affecting the quality of process of admission, and that too, on any strong, dependable, scientific basis or experts' views, material or information. Merely relying on few statistics emerging from the outcome of examination at two phases, in fact, now, three phases, 'ipso-facto', could it be said to be discriminatory, inter-se, the students or unequal treatment to the students appeared in examinations on different

dates in so far as the merits or the results are concerned ? Our spontaneous answer will be positively in the negative. It cannot be concluded only on these materials, and that too without any data, material information or opinions of experts that one 'Merit-List' for admission purpose of different courses for phase-wise examination on different occasions arising out of unprecedented, unfortunate situation, is going to affect the prospects and merits of students, insofar as the admission to professional courses is concerned.

[18] It is, in this context, it is really, expedient to point out the following unquestionable aspects, which would militate against the plea of the petitioners about the inequality, injustice and discrimination, inter-se the students, and Two Merit-Lists theory for admission in professional college courses. 1. All the students who appeared for examinations of standard 12th in three phases form one and same class in view of the there being Common : (a) syllabus; (b) pattern and style of question papers; (c) pattern and style of evaluation of answer sheets; (d) provision of minimum passing marks. (e) drawal of all papers sets for all the phases much prior to the date of First-Phase Examination. (f) evaluation, key-guide for all the phases.

[19] It is not the case that the question papers were set out of the syllabus or with a different pattern and style or for that purpose, with different standard of evaluation. How could, therefore, they be differentiated for the purpose of preparing separate 'Merit-List' of phase-wise examination? Again, the question would be, even if the prayer is accepted, at its face value, then also, there is no guarantee that meritorious students will not be the casualty or victim of alleged discrimination or inequality. Again, it has not been clearly and convincingly propounded as to how and by what method the admission criteria could be prepared out of the phase-wise examination 'Merit-Lists, where even a fraction of marks makes or mars the career of bright students.

[20] There is no any authentic and reliable data based on which it can be safely concluded that preparation of more than one 'Merit-List' would lead to equality, justness and reasonableness without detrimental and adverse interest of all concerned and it would, evidently, manifest the merits and nothing but merits.

[21] Until such a scheme is evolved and resolved, which is the job of, of course, not of Judges, but of experts and experienced academicians, who would be able to provide scientific and reliable material and data for such an unforeseen eventuality or emergency or urgency, even in the event of any, prima facie, existence of substance on the existing material. However, in case an Expert Committee or responsible body of academicians is appointed to evolve a scheme or an answer to meet with such extra-ordinary, emergent, situational reality, it may be possible and permissible for the respondent No.1 Government, in view of Rule 10 contained in Rules approved by the

Government Resolution No.GR No. MCG/1002/1000/J dated 18.5.2002, which prescribes that the Government, have the right to introduce any new rule make changes in any of the existing rules at any time to deal with diverse problems arising out of infinite variety of situations. We hope and trust that in order to obviate any such doubt in future, the Government or for that purpose any competent Authority and they, may take up such an exercise to probe deeply, make research and search the remedy, with the help and aid of academicians and experts for the future generations in such eventualities. We feel and expect that our this hope and trust will not be a cry in the wilderness and will not dash with deaf ears. This is the only point on which we could agree with the alternate submission.

[22] In course of the hearing, we have been taken through host of the case law in support of their rival versions and propositions, to which, briefly, we propose to make reference hereinafter.

[23] Again, even at the cost of repetition, we may make it abundantly, clear that judicial review is one of the basic features of our Constitution and it is one of the very important armouries in the administration of justice and it can be, successfully, invoked by the parties and can be, successfully, employed into service by the Court provided one or more parameters charted and prescribed by host of case law get attracted or satisfied. Such a weapon, if used, time and again, in avoidable and unnecessary litigation and sought frequently without any reasonable and just grounds, obviously, it would turn out to be in due course of time blunt and ineffective. It has been noticed that, time and again, for petty or a small controversy, grievance or issues which otherwise could have been resolved elsewhere, is being brought to the Constitutional Courts invoking the provisions of Article 226. It is, undoubtedly, unhealthy syndrome.

[24] No doubt, it has to be used in a proper case to put injustice down and to put any omission or commission found to be unjust, unreasonable or illegal in a legal and reasonable shape. In our opinion, in this petition, in absence of any authentic, reliable and experts-views and material, it is not fit and expedient to direct the respondent Nos.1 & 2 as desired, to prepare two 'Merit lists' based on phase- wise examinations, since it is a policy matter and requiring expertise of academics and dependable materials. Again, Article 14 guarantees similarity in treatment and not identical treatment. Whether there is similarity or not, whether the invoked proposition for the relief is a better remedy or worse malady, will be a matter of anybody's guess in absence of reliable data and particulars and experts' views and opinions. Again, we cannot resist the temptation of placing it on record that the matter of conducting examinations and appearing in such examination and thereafter declaring the outcome thereof, would be, as such depending on variety of factors, facets and circumstances.

Would it not be part and parcel of concept of Examination, testing quality, calibre, competence and the overall preparation of it?

[25] We cannot even substitute our views even if we find that a different view is possible or a different scheme is probable and better in place of the scheme or the policy evolved by the statutory authority, in exercise of and out of its statutory functioning and incumbency.

[26] It is, rightly, submitted that it is not expedient for the Writ Court to interfere in a writ petition in the policy matters of academic sphere, and, ordinarily, in the field of education, in the matter of conduct of examinations, parameters of evaluation of answer papers and the pattern and style of question papers etc. Otherwise, a Court exercising extra-ordinary, prerogative, equitable and discretionary writ jurisdiction will be substituting its own views in place of existing practice and set policy. There is no even remote allegation that there is breach of any rule, regulation or provision. There is, also, no challenge against the validity of rules or regulations or any legal provisions. The plea and the resultant prayer which is raised in this petition, if accepted; obviously, would entail far reaching ramifications and repercussions on public examinations conducted by the Examination Bodies, and that too, in absence of authentic, dependable, reliable objective material and data, and, also, in absence of the opinion of experts. Therefore, ordinarily, in such matters, the Writ Court will be at loath to substitute its own perceptions and views in place of existing set policy and practice. The view which we are inclined to take is very much reinforced by the following decisions: (1) AIR 1984 SC 1543, MAHARASHTRA S.B.O.S & H.S. EDUCATION V. PRARITOSH. (2) XXI(2) GLR 318, RAJENDRA R.' V. GUJ. SECONDARY EDUCATION BOARD. (3) XLII (1) GLR 398, DIST. EDUCATION OFFICER V. R.K.RATHOD. (4) AIR 1987 SC 190, STATE OF U.P. V. A.K.SING (5) AIR 1979 SC 765, STATE OF KERALA V. T.P.ROSHANA (6) AIR 1992 SC 1475, P.K.GOEL V. U.P. MEDICAL COUNCIL. (7) (2002) 4 SCC 34, ASHUTOSH GUPTA V. STATE OF RAJASTHAN & ORS.

[27] The last submission advanced before us, by the learned Addl. Advocate General that, if one accepts the proposed pattern or logic of the petitioners in respect of the alleged classifications of students appearing in the same examinations at two times, answering two different set of papers, then in that case, there may be several number of circumstances like centres with distances, different environment at the centres, availability of transport facilities and which can, also, be made basis for artificially creating two or more different classes, with a request for making of as many list as there are such artificial classification of students and the resultant effect would be utter chaos in the administration of education system and heart-burning to the students in terms of their prospects and career point of view, cannot be, also, easily, brushed aside or thrown over-board.

[28] It is, also, necessary to mention that there is no any allegation of malafide or mal-practice or any irregularity resulting into miscarriage of justice.

[29] Ordinarily, it is not within the domain of any Court to evaluate the advantages or disadvantages and pros and cons of the educational policy or prevailing system in the holding of examinations and to scrutinise it and test the degree of its benevolent and benign disposition for the purpose of altering or changing it, except where it is shown to be unreasonable, arbitrary or violative of any provisions of law. In the field of holding of examinations, type and pattern of syllabus, methodology of evaluation and consideration of merits for the purpose of admission in the higher courses fixed by the competent educational authorities and based on expert views and opinion, it would not be expedient to question, judicially, the wisdom of such a policy or practice.

[30] After having given our anxious thoughts and consideration to the overall factual profile emerging from the record of the present case, and the rival submissions, coupled with the relevant and material legal proposition, it cannot be said that the rights of the petitioners-students are, in any way, hampered, jeopardized or violated, in absence of any expert opinion and reliable material. We are, therefore, of the opinion that the writ petition on hand is devoid of any force of facts and law and deserves only and only one fate of rejection.

[31] Consequently, the petition is rejected without any order as to costs. Notice discharged.