

Manish Ujwal And Ors. vs Maharishi Dayanand Saraswati ... on 16 August, 2005

Equivalent citations: JT2005(8)SC382, (2005)13SCC744, 2006 AIR SCW 4703, 2005 (13) SCC 744 2006 (6) AIR BOM R 132, 2006 (6) AIR BOM R 132

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Bench: C.K. Thakker

ORDER

1. Heard the learned counsel for the parties.

2. Leave granted.

3. Challenge, before us, is to the correctness of the impugned judgement of the High Court whereby the decision of the learned Single Judge was affirmed by the Division Bench on coming to the conclusion that it cannot be said with certainty that the answers to six questions given in the answer keys were erroneous and incorrect.

4. Briefly, the facts are that the student community filed a writ petition before the High Court challenging their ranking in the Entrance Tests, which were conducted by Respondent No. 1-Maharishi Dayanand University [for short, "the University"] on 9th May, 2005, 10th May, 2005 and 11th May, 2005, for admission to medical and dental courses in various colleges in the State of Rajasthan. The grievance of the students was that, various key answers on the basis whereof the answer sheets were evaluated were wrong and, consequently, wrong and erroneous ranking was prepared.

On the aforesaid three dates, examinations were held for Physics, Chemistry and Biology subjects respectively. The results were declared on 2nd May, 2005 on internet and published in the newspapers on 23rd May, 2005. The total marks allotted to each subject were 300, i.e., 900 in total. Each paper had 100 questions of trade marks each. The marking system provided for reducing one mark for each wrong answer, which means that negative marking system was adopted. The answers were objective giving multiple choices to the students, i.e., A/B/C/D. The controversy before the High Court and again agitated before this Court by the students after being unsuccessful before the High Court is the wrong key answers pertaining to various answers in all the three subjects of Physics, Chemistry and Biology. The learned Single Judge sought for the expert opinion of Jodhpur University and Udaipur University. For the present purpose, we are not noticing and considering those key answers in respect/whereof there is a difference of opinion. We are considering only those key answers or which there is unanimity. Admittedly, six key answers; one in relation to Physics; two in relation to Chemistry; and three in relation to Biology were incorrect and erroneous. The opinion of the experts of both Jodhpur and Udaipur Universities as regards the said questions was

same, according to which the key answers, as provided by the respondent-University, were erroneous. The question as to whether in respect of these questions, the key answers provided by the University were erroneous and wrong has not presented any difficulty to this Court in view of a fair stand taken by the learned counsel for the University before us. The learned counsel, has admitted that the key answers Were wrong. The said six questions and the key answer's, as provided, and the correct answers are as under:

S.No.	Quater	Subject	Answer as Per University Key	Correct Answer
1.	P54, Q18, R7, 382	Physics	A	D
2.	P39, Q26, R92, S27	Chemistry	A	B
3.	P40, Q27, R93, S28	Chemistry	C	B
4.	P6, Q26, R46, S31	Biology	D	B
5.	P80, Q90, R85, S55	Biology	B	D
6.	P81, Q91, R86, S56	Biology	A	D

5. We are not referring to the answers given by the experts from the Jodhpur and Udaipur Universities in respect of other questions in view of the difference of opinion and are proceeding only on the basis of the erroneous key answers in relation of the aforesaid six questions. As to the impact of evaluating answers by feeding incorrect keys, at present, it may not be exactly possible to comment, also keeping in view the adopting of negative marking system and a very tough cut-throat competition amongst the students.

6. We may, however, note as to what the appellants' have been tentatively projected. It is as under:

S. No.	Roll No.	Student Name	Category	Number of Qs. attempted out of six Qs.	Marks as per answer key	Marks as per expert opinion
		Ujjhawal				
		Choudhary				
		Vaishnav				
		Prata Godhara				
		Singh Charan				
		Kumar				
		Gupta				

Harsh

Usman

Veer Singh

7. The aforesaid is only illustration to show if figures given above are found to be correct on re-evaluation with correct answers, it can make a considerable difference when rank is dependent even on a fraction of a mark.

It seems that nearly thirty thousand students appeared in the examination held between 9th and 11th May, 2005. It was an entrance examination for admissions in the Government medical and dental colleges as also for fifty per cent State quota in the said disciplines in private colleges and not for the remaining management quota. On the basis of the results declared and ranking given, the first counselling for admission to the aforesaid courses in Government colleges and fifty per cent State quota in private colleges has already taken place. It is possible that the fresh evaluation by feeding correct key answers to the six questions may have adverse impact also on those who may have already secured admission on the basis of the results declared and ranking given by feeding incorrect keys in relation to these questions. Though we are of the view that the appellants in particular and student community in general, whether one has approached the court or not, should not suffer on account of demonstrably incorrect key answers but, at the same time, if the admissions already granted as a result of first counselling are disturbed, it is possible that the very commencement of the course may be delayed and the admission process for the courses may go beyond 30th September, 2005, which as the cut-off date, according to the time schedule in the Regulations and as per the Law laid down by this Court in *Mridul Dhar (Minor) and Anr. v. Union of India and Ors.* In this view, we make it clear that fresh evaluation of the papers by feeding correct key answers would not affect the students who have secured admissions as a result of the first counselling on the basis of ranking given with reference to the results already declared.

8. In *Kanpur University, through vice-Chancellor and Ors. v. Samir Gupta and Ors.*, considering similar problem, this Court held that there is an assumption about the key answers being correct and in case of doubt, the court would unquestionably prefer the key answer. It as for this reason that we have not referred to those key answers in respect whereof there is a doubt as a result of difference of opinion between experts. Regarding the key answers in respect whereof the matter, is beyond the realm of doubt, this. Court has held that it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong. There is No dispute about the aforesaid six key answers being demonstrably wrong and this fact has rightly not been questioned by the learned counsel for the University. In this view, students cannot be made to suffer for the fault and negligence of the University.

9. The High Court has committed a serious illegality in coming to the conclusion that "it cannot be said with certainty that answers to six questions given in the key answers were erroneous and incorrect". As already noticed, the key answers are palpably and demonstrably erroneous. In that view of the matter, the student community, whether the appellants or intervenors or even those who did not approach the High Court or this Court, cannot be made to suffer on account of errors committed by the University. For the present, we say no more because there is nothing on record as to how this error crept up in giving the erroneous key answers and who was negligent. At the same time, however, it is necessary to note that the University and those who prepare the key answers have to be very careful and abundant caution is necessary in these matters for more than one reasons. We mention few of those; first and paramount reason being the welfare of the student and a wrong key answer can result in the merit being made a casualty. One can well understand the predicament of a young student at the threshold of his or her career if despite giving correct answer, the student suffers as a result of wrong and demonstrably erroneous key answer; the second reason is that the courts are slow in interfering in education matters which, in turn, casts a higher responsibility on the University while preparing the key answers; and thirdly, in cases of doubt, benefit goes in favour of the University and not in favour of the students. If this attitude of casual approach in providing key answer is adopted by concerned persons, directions may have to be issued for taking appropriate action, including the disciplinary action, against those responsible for wrong and demonstrably erroneous key answers but we refrain from issuing such directions in the present case.

The second counselling for the admission abovementioned, we are informed, is fixed from 25th August, 2005, onwards. We direct re-evaluation of all the questions by feeding correct answers, as above noticed, and on that basis correct number of marks obtained by all the students should be assigned and their ranking prepared. This exercise shall be completed within a period of three days from today. List so prepared shall be put on internet soon thereafter as also be published in the newspapers wherein it was earlier published. The second counselling and admissions hereinafter in the medical and central courses in the State of Rajasthan in Government colleges as also in the private colleges insofar as the State quota is concerned would be made on the basis of ranking as per the list which will now be prepared by the University pursuant to the directions of this Court. The merit list shall be prepared for the same number of students as it was prepared earlier while declaring the results on 22nd 23rd May, 2005.

10. For the aforesaid reasons, we set aside the impugned judgment of the High Court, allow the appeals and impose on Respondent No. 1-University cost amounting to Rupees one lakh, which amount shall be kept by the University in a separate account to be utilised only for the welfare of the student community.

11. The interlocutory application for intervention stands disposed of in the above terms