Supreme Court of India
C. Tulasi Priya vs A.P. State Council Of Higher ... on 29 July, 1998
Author: Bharucha.
Bench: S.P. Bharucha, K. Venkataswami

PETITIONER:
C. TULASI PRIYA

Vs.

RESPONDENT:
A.P. STATE COUNCIL OF HIGHER EDUCATION & ORS.

DATE OF JUDGMENT: 29/07/1998

BENCH:
S.P. BHARUCHA, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T BHARUCHA. J.

The order under challenge was passed by a Division Bench of the High Court of Andhra Pradesh on 23rd September, 1996. The High Court dismissed the writ petition filed by the appellant finding "no merit in the petition".

The appellant appeared for the Engineering, Agriculture and Medical Common Entrance Test(EAMCET) held on 22nd May, 1996, for admissions, inter alia, to medical colleges in the State of Andhra Pradesh for the academic year 1996-1997. The examination commenced at 2.00 p.m. and terminated at 5.00 p.m. It is the appellant's case that she entered the examination hall at about 1.45 p.m. She was given an objective type answer paper at about 1.55 p.m. At about 2.20 p.m. an invigilator came to her to obtain her signature, presumably in token of having received the answer paper. The invigilator then discovered that the appellant had been given a 'D' type answer paper whereas she ought to have been given a 'C' type answer paper. The invigilator took the 'D' type answer paper away, discussed what had happened with fellow invigilators and, after 10 minutes or so, gave the appellant a 'C' type answer paper to mark. The appellant had, thus, two and a half hours' time to answer 200 questions which, otherwise, she would have done in three hours. The appellant answered 170 out of 200 questions in the time that was available to her. It is an admitted position

that she secured 160.75 marks, which is 94.555% of 170 marks, for the 170 questions answered.

The day after the examination the appellant addressed. through her advocate, a telegram to the convener of the examination. She recorded therein that she had been given another answer paper after 40 minutes but no extra time had been granted to her to answer the same fully inspite of her request. The telegram was followed by a letter, also written through her advocate, in which the incident afore-mentioned was set out in detail. Having received no redress, the appellant filed the writ petition and prayed that her answer paper should be re-assessed on the basis of 170 questions in two and a half hours' and for 170 marks instead of 200 marks and for consequential relief. No reply on oath was filed to the writ petition, but para-wise remarks were submitted. It was conceded in the para-wise remarks that the appellant had been given a wrong answer paper 'D' instead of answer paper 'C' The para-wise remarks stated that "immediately the invigilator has noticed his mistake and changed with correct paper immediately in as per the reports of the concerned invigilators. The contention of the petitioner that she lost 10 minutes in exchange of the paper is false and far from truth and not correct. Actually, there was only a few seconds of the time taken by the invigilator for the exchange of the above answer book.....As only few seconds were taken in exchange of the book, no time lapses had occurred practically." To the para-wise remarks the appellant filed objections and reiterated her case. She submitted that the answer book which she had been first five and the answer book that she had been subsequently given should be produced before the High Court.

The High Court noted in the impugned order that there appeared to be some lapse on the part of the invigilator. It said that, according to the appellant, the lapse had caused the loss of half an hour while, according to the authorities, the exchange had been made immediately on being detected. This required an investigation into facts, which was impermissible. If there had been a delay there was a genuine grievance, but the appellant, without protesting, had continued to answer and had submitted the answer paper after the examination was over. Learned counsel for the appellant submitted to the High Court that a student was not expected to be aware of niceties and lodge a written protest during the course of the examination. The High Court said that it was not inclined "to enter into such speculations." The High Court turned down the request of learned counsel for the appellant to call for the answer papers to find out whether they showed that a loss of time had occurred. Finding no merit in the writ petition, it was dismissed.

In this Court the examination authorities have filed a counter in which it is stated that the fact that the wrong question paper had been distributed to the appellant "was discovered very soon after the students commenced the examination and within a few minutes of the starting of the examination, the correct question book was delivered to the appellant on which she has marked her response." It is further stated that "the first answer script on which the appellant has marked her response is not traceable for the reason that the concerned authorities must have treated the answer script as spoilt document and the same must have been weeded out. As such there is no material available to cross-check the version of the appellant. But in view of the response given by the appellant to all the questions from the beginning to the end with a wide gap in between, it cannot be said that the appellant had suffered any prejudice.....". To the counter is annexed a letter written to the authorities by the invigilator concerned pursuant to their enquiry with her dated 10.9.1996. The

invigilator stated:

> "As per the distribution of question papers the candidate with H.T. NO. 5107297 has to be given paper C but the candidate was given a paper D instead of paper C, but immediately I noticed the mistake on my going to next seat and changed with correct paper immediately without any loss of time i.e., within few seconds."

The papa-wise remarks of the authorities before the High Court refer to "the reports of the concerned invigilators". These reports are not annexed either to the papa-wise remarks before the High Court or to the counter filed before this Court, nor have they been produced here. In this context it is to be noted that it became necessary for the authorities to write to the invigilator on 10th September, 1996, to inquire about the incident and the counter would appear to be based upon the invigilator's reply. The inquiry was made almost four months after the incident and there is nothing to indicate that the invigilator's reply was based on anything but her memory.

Immediately after the examination the appellant's advocates sent a telegram to the authorities and followed it up with a letter. The authorities could not but have been aware of the fact that legal proceedings were likely to ensue. Inspite of that, the appellant's answer papers were not preserved and we have the bland assertion in the counter before this Court that they were not traceable "for the reason that the concerned authorities must have teated the answer script as spoilt document and the same must have been weeded out".

The counter adds that in the absence of the appellant's answer books "there is no material available to cross-check the version of the appellant".

That the appellant was in the first instance supplied the wrong answer paper and that it was subsequently replaced by the correct answer paper is not disputed. The length of time taken to discover the mistake and to supply the replacement is not state with consistency in the para-wise remarks filed by the authorities before the High Court, in the counter filed before this Court and in the reply of the invigilator to the enquiry made of her. There can be no doubt that the production of the two answer papers would have indicated whether or not the case of the appellant was correct but the authorities have preserved the answer sheets though they well knew that the answer sheets would be relevant. It must be assumed, in the circumstances, that the answer sheets, if produced, would have borne out the case of the appellant that she had marked for about 20 minutes her answers on the wrong sheets. The case that the appellant has put forward seems, in any event, to have the ring of truth. It is unlikely that the invigilator would have immediately replaced the wrong answer paper that she had supplied the appellant without consulting one or more colleagues about what she should do in the circumstances and this would ordinarily have taken quite some time.

It is unrealistic to expect a young and, no doubt, nervous student in the midst of an important examination to think of submitting written protests there and then. The refusal of the High Court to interfere on this ground has, regretably, compounded the injustice done to the appellant. As for the ground of disputed questions of fact, all that the High Court needed to see was the wrong answer paper first given to the appellant. The number of questions that she had marked thereon would have

indicated whether she was right when she said that she had worked on it for about 20 minutes. It this answer paper could not be produced even at that stage, the High Court should have drawn the appropriate adverse inference against the authorities.

In the circumstances and to do complete justice, it si necessary to grant the relief that is sought in the appellant's writ petition and to direct that the appellant shall be considered for admission to a medical college in the State of Andhra Pradesh in a seat from the quota of the State of Andhra Pradesh for the academic year 1998-99 session upon the basis that she has secured 94.555% marks at the EAMCET.

The appeal is allowed accordingly. No order as to costs.