
(2005) 07 BOM CK 0120

In the Bombay High Court

Case No : Writ Petition No"s. 4484 to 4490, 4508 to 4510, 4656, 4657 and 4742 of 2005

Akshay Bhalerao

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 21-07-2005

Acts Referred:

Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 — Section 36

Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 — Regulation 104, 57, 57(2)

Citation : (2006) 1 ALLMR 342 : (2006) 2 BomCR 721 : (2005) 4 MhLj 909

Hon'ble Judges : S.P. Kukday, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : M.B. Bharaswadkar, S.R. Bhilegaonkar, N.B. Suryawanshi, Avinash W. Kshirsagar, Vaishali Pushkar Patil, D.M. Pardeshi and K.B. Kulkarni, for the Appellant; E.P. Sawant, G.P. and Surekha Mahajan, for the Respondent

Judgement

S.P. Kukday, J.—Writ Petition Nos. 4484/2005 to 4490/2005, 4508/2005 to 4510/2005, 4656/2005, 4657/2005 and 4742/2005 raise a common question of law and fact, therefore, these writ petitions are disposed of by a common judgment.

2. Petitioners are the guardians of the students who appears for final examination of 10th standard (S.S.C.) held by Maharashtra State Board of Secondary and Higher Secondary Education (hereinafter referred to as the Board) in March, 2005. By and large, all these students are taking education from the beginning in English Medium. Their record in the previous examination in English besides other subjects was good. Therefore, all these students were sure about their performance in the final examination held by the Board in the year 2005. This expectation of the student was based on their hard work. However, when the results were declared, the students found that they have scored good marks in all subjects except English. This was shocking. Therefore, the petitioners who

are the parents/guardians of the students preferred applications through the Head Master/Principals of the respective schools for revaluation. However, by its reply dated 27-6-2005, the Board made it clear that in view of Regulation 57 of the Maharashtra Secondary and Higher Secondary Board Regulations, 1977, (hereinafter to be referred to as the Regulations of 1977) the only remedy available to the students was that of verification which includes checking of the papers to ascertain whether all the questions are examined, whether marks are properly carried to the first sheet and whether the total is correct. The students apprehended that verification may not serve the purpose. Therefore, they have filed these petitions for the redressal of their grievance praying for the relief of revaluation of the answer books.

3. During the pendency of the petitions, with the leave of the Court, petitions came to be amended challenging virus of Regulation 57 of the Regulations of 1977, on the ground that it is unreasonable, arbitrary and unconstitutional.

4. Learned counsel for all the petitioners have adopted a similar line of argument. The gist of the argument is that, the students worked hard during the previous years. Their performance in all the subjects including English in 8th, 9th and 10th standard prior to the final examination, was very good. They were taking education in English medium. Therefore, it was their legitimate expectation that they would earn good marks in English. When the results were declared, two categories of students emerged. One was the category of passed students. Though they did pass the examination, the marks scored by them in English were very poor and not upto their expectations. Second category was that of the failed students. The marks secured by them in other subjects were good but the marks in English were shockingly poor. Learned counsels submit that career of the students is at stake. These are impressionable children. If no steps are taken to reassure them, they would be frustrated and this may result in disastrous consequences. According to learned counsel, considering the exceptional circumstances, there has to be reassessment of the answer books. It is contended that there can be no confidentiality after results are declared and for giving fair deal to the students there has to be reassessment of the answer books. Regulation 57 which prohibits revaluation is unreasonable, arbitrary and unconstitutional. Therefore, the said regulation has to be declared as ultra vires.

5. On the other hand, learned counsel appearing for the Board contends that previous record is not of much help. The behaviour and reaction of pupils at the time of examination are entirely different. Therefore, it would not be a proper to rely on the previous record. Learned counsel referred to the criticism pertaining to revaluation of the answer books and propounded that variation in marks scored by different students cannot be a guide for arriving at any conclusion. It has to be borne in mind that if a same question is valued by different examiners, the marks given by them may not be the same. According to learned counsel, this is because of the difference in the individual approach which varies from person to person. Learned counsel has pointed out that there is no provision for

reevaluation, therefore, relief sought by the petitioners cannot be granted. In support of this contention, reliance is placed on the judgment of the Supreme Court reported in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, . According to learned counsel, if all the aspects are taken into consideration, the petitions deserve to be dismissed.

6. The petitioners have challenged vires of Regulation 57(2) of the Regulations of 1977 on the ground that it is unreasonable, arbitrary and unconstitutional. However, learned counsel for respondent has rightly contended that validity of Regulation 57 cannot be challenged in view of the ruling of the Apex Court reported in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, . In that case, their Lordships of the Apex Court were considering the validity of clauses 1 to 3 of Regulation No. 104. After considering all facets, their Lordships held that all the three grounds of attack namely (1) that the impugned clauses were violative of the principles of natural justice, (2) that clauses 1 to 3 were ultra vires and void on the ground of their being in excess of the regulation making powers conferred on the Board by Section 36 of the Act, and (3) that the impugned provisions contained in Clauses 1 and 3 were highly unreasonable and since the regulations framed by the Board are in the nature of bye-laws, they are liable to be struck down on the ground of unreasonableness cannot be sustained. In this view of the matter, the Apex Court upheld the validity of this provision. The regulation is divided in three parts. First part is common. Second part is applicable to S.S.C. examination and the third part is applicable to H.S.S.C. examination. Regulation 57(2) in respect of the verification of the answer sheets found in part II is in pari materia with Regulation 104 found in the third part. In view of this judgment of the Apex Court, contention of the learned counsel for petitioners that Regulation No. 57(2) is ultra vires cannot be sustained.

7. Turning to the merit of the case, it can be seen that in the present case, students who have approached the Court fall in two categories. One is of the students who passed the examination but have not secured marks in English upto their expectation. The other category is of the students who scored good marks in other subjects but have failed because of poor marks in English. Learned counsel for the respondents has rightly pointed out that expectations of the students cannot be a guide for coming to any conclusion. The aspirants have their own estimation which may prove to be an exaggeration. This contention is logical but it is a matter of common knowledge that there is always a difference of 5 to 10% marks between the performance at the prelims and other examinations of the 10th standard and the final examination. There can also be no quarrel with the arguments advanced by the learned counsel for the Board that assessment of marks differs from valuer to valuer. There can be a marginal difference in assessment. However, when this difference in approach crosses rational limits, it becomes necessary to take cognizance of such exceptions. In the present case, the students who have excelled in all other subjects but

secured poor marks in English, are :

Anuja d/o Prabhakar Dixit (W. P. No. 4485 of 2005). She scored 99/100 in Sanskrit, 84/100 in Marathi, 137/150 in Maths, 147/150 in Science and 130/150 in Social Sciences aggregating 84.80%, but has secured only 39 marks in English.

Apurva d/o Gopal Bharaswadkar (W. P. No. 4486 of 2005) has scored 99/100 in Sanskrit, 83/100 in Marathi, 139/150 in Maths, 143/150 in Science and 130/150 in Social Sciences aggregating 84.26%, but has secured only 38 marks in English.

Madhura d/o Milind Abhyankar (W. P. No. 4487 of 2005) has scored 96/100 in Sanskrit, 84/100 in Marathi, 112/150 in Maths, 142/150 in Science and 115/150 in Social Sciences aggregating 78.40%, but has secured only 39 marks in English.

Akash s/o Subhash Charuvilla (W. P. No. 4510 of 2005) has scored 99/100 in Sanskrit, 83/100 in Marathi, 137/150 in Maths, 145/150 in Science and 136/150 in Social Sciences aggregating 84.66%, but has secured only 35 marks in English.

Nikhilesh s/o Chandrakant Sahani (W. P. No. 4657 of 2005) has scored 87/100 in Sanskrit, 78/100 in Marathi, 124/150 in Maths, 136/150 in Science and 126/150 in Social Sciences aggregating 87.13%, but has secured only 35 marks in English.

Akanksha d/o Prashant Umrani (W. P. No. 4742 of 2005) has scored 98/100 in Sanskrit, 83/100 in Marathi, 145/150 in Maths, 147/150 in Science and 141/150 in Social Sciences aggregating 87/06%, but has secured only 39 marks in English.

8. There are students who excelled in other subjects but have faired poorly in English. It will be worthwhile to give examples of these students who failed because of failure in English. These are :

Akshay Dilip Bhalerao (W. P. No. 4484 of 2005) has scored 97/100 in Sanskrit, 83/100 in Marathi, 138/150 in Maths, 145/150 in Science and 134/150 in Social Sciences aggregating 82.40% but has secured only 21 marks in English.

Mukund s/o Govind Fulse (W. P. No. 4488 of 2005) has scored 93/100 in Sanskrit, 84/100 in Marathi, 103/150 in Maths. 136/150 in Science and 121/150 in Social Sciences aggregating 72.53% but has secured only 7 marks in English.

Mayuresh s/o Uday Chittal (W. P. No. 4489 of 2005) has scored 91/100 in Sanskrit, 84/100 in Marathi, 108/150 in Maths, 136/150 in Science and 116/150 in Social Sciences aggregating 74.53% but has secured only 24 marks in English.

Akshay s/o Sunil Hibare (W. P. No. 4508 of 2005) has scored 98/100 in Sanskrit, 83/100 in Marathi, 123/150 in Maths, 138/150 in Science and 114/150 in Social Sciences aggregating 76.80% but has secured only 20 marks in English.

9. It is not necessary to multiply the numbers. Suffice it to say that from the data available, it can be seen that though the candidates have excelled in other subjects, they faired poorly in English. The pattern raises questions about valuation of English papers.

10. Learned counsel for the petitioners from St. Lawrence High School has submitted an interesting argument. According to learned counsel, pattern adopted for the valuation of the papers is that papers from the different centers are distributed between three different valuers to ensure that a valuer does not check the papers serially. A bunch of papers at random from the center are given to these valuers. In the present case, it can be seen that a ratio of 2 : 1 is maintained for the students securing less marks showing that papers of unsuccessful students who secured poor marks in English and who are from St. Lawrence School, are examined by the same examiner/valuer. To substantiate this argument, learned counsel has given a demonstration showing that the roll numbers of failure students occur at the regular intervals in the ratio of 2:1. He further contended that other two examiners have given very good marks such as 60% or so, whereas third examiner has given poor marks such as 9, 11 or so to the students from St. Lawrence High School. Be that, as it may; the fact remains that the students who secured marks upto 82% have failed because of getting poor marks in English. Generally, most of the unsuccessful students consist of strugglers who are of average caliber. However, when we come across the cases where brilliant students securing more than 80% marks in other subjects fail only because of the failure in English though they are from English medium school, it can be said that, something is wrong somewhere. Another aspect which must be taken into consideration is that English paper which is placed on record consist of seven questions. Out of them, question No. 5 on grammar, question No. 6 for writing and question No. 7 for essay, are the only subjective questions. In all other questions, a passage is given and the questions are based on this passage. In all 44 marks are for grammar, essay and writing. Remaining 56 marks are for the questions which are based on the passage given in the question paper. Though reaction of the students cannot be predicted, it is too much to believe that students securing 82% marks studying in English medium will be so duffer that they can secure only 7 or 21 marks in English. This reasoning applies to all other students who are before the Court.

11. Learned counsel for the Board has contended that there is no provision for revaluation in Regulation 57(2) of the Regulations of 1977, therefore, the Board officials cannot show indulgence and cannot reassess the papers unless directions are given to this effect. Learned counsel has graciously produced sealed bundle of answer books before the Court for perusal. Present case is a class action by the students from both the categories of students who have passed examination with poor marks in English and the students who have failed S.S.C. examination because they secured poor marks in English though they have secured very good marks in all other subjects. Therefore, these petitions are not the petitions filed by frustrated students who feel that injustice has been done to them. Thus, there is something more to this controversy than meets the eye. It is always desirable that accuracy in evaluation of the answer books should be achieved. So also the human errors in valuation should be minimised as much as possible while evaluating answer books of the students. It may also be

pertinent to mention that some of the Universities such as Shalini Vs. Kurukshetra University and Another, and University of Jammu 2001 (5) SR. 304 are permitting revaluation of the answer books ushering a new era. Be that, as it may; in cases, where it is found that students from particular school are victimized and that the students studying in English medium who secured very good percentage of marks in all other subjects than English, it can be said that such cases are an exception to the rule. Similar view is taken by the Orissa High Court in the matter of Rajkishore Mohanty and Others etc. Vs. Council of Higher Secondary Education, Orissa and Others, . After referring to the judgment of the Apex Court, in the case of Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumarsheth, Pasayat, J. (as His Lordship then was) observed in para No. 4 of the report that, it is imperatively desirable that there should be fairness and accuracy in evaluation of answer books. The system should be fool proof so far as errors are concerned leaving no scope for genuine and bona fide grievance. Enormity of labour and time involved, notwithstanding, a positive attempt to eliminate gross and indefinite uncertainty in the matter of evaluation is a must. Council's efforts in this regard leave such to be desired. In that case, a committee was appointed to deal with cases where applications were made for re-addition of marks wherever necessary and to ensure that there was no delay in completing the exercise. In para No. 6 of the report, it is observed by the Court that, it is true that there is no specific provision in the regulation for constitution of such committee. But in the interest of the candidates and to avoid unnecessary delay, we have felt necessity of constitution of such committee. We are sure that if the aforesaid procedure is adopted, inaccuracy in evaluation shall be reduced to considerable extent. This arrangement shall be made in respect of Annual Examination, 1993, and for subsequent examinations. So far as the embargo of the revaluation is concerned, it is observed in para No. 7 of the report that since revaluation is not permissible, we have not considered it fair to direct revaluation. But at the same time, it is the duty of the council to obviate apprehension and belief of large number of candidates that they are victims of improper valuation. Similar approach can be adopted in the present group of petitions in the interest of the students and to ensure that career of impressionable students is not wrecked and they do not forfeit right to a bright future.

12. We therefore, deem it necessary to direct the board to subject the answer papers of English subject of the petitioners to revaluation by any competent Valuer other than the Valuer who had valued those answer papers earlier, within a period of five weeks from today and to carry out necessary corrections/modifications in the ultimate results of the petitioners, based on the result of such revaluation and do the needful in that regard. However, the challenge to the validity and to the constitutionality of Regulation 57(2) of the Regulations of 1977 cannot be sustained and, therefore, the petitions are partly allowed in terms of the above directions for revaluation. Revaluation is directed in the peculiar facts and circumstances of these petitions, therefore, this decision

should not be construed as a precedent but should be confined to the facts and circumstances of these petitions only.