

(1989) 11 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 1755 of 1989

Anjay Bansal

APPELLANT

Vs

Bangalore University and another

RESPONDENT

Date of Decision : 10-11-1989

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 15, 16
Karnataka State Universities Act, 1976 — Section 38

Citation : AIR 1990 Kar 225 : (1990) ILR (Kar) 239

Hon'ble Judges : H.G. Balakrishna, J

Bench : Single Bench

Advocate : Colonel V.K.K. Nair, for the Appellant; Shivraj Patil and B.K. Chandrashekar, for the Respondent

Judgement

1. The petitioner has sought for quashing of the Notification dated 9-8-1985 issued by the Bangalore University partially to the extent that it prohibits revised ranking in respect of those examinees who derive benefit in the revaluation save the declaration of class.

2. According to the aforesaid Notification, it is provided as follows (only the relevant portion of the Notification is reproduced) :--

"In supersession of earlier notification Nos. SYN.4.ORD.80/83 dated 22-9-1983, 27-4-1984 and 16-10-1984 and in exercise of the powers conferred on it under S. 38 of the Karnataka State Universities Act, 1976, the Syndicate of the Bangalore University at its meeting held on 25-7-1985 has been pleased to make amendment, to the Ordinances published in earlier notification cited above. With the amendments to the said ordinances the following shall be the Ordinances regarding revaluation (review) of Answer Scripts:--

XXX XXX XXX

7. No revised rank will be declared in respect of those who get benefit in the revaluation (review) and no incidental benefit which accrue due to the

reevaluation (review) will be granted, except declaration of class.

XXX XXX XXX

3. The material facts are that the petitioner being a student of Seshadripuram College, Bangalore, appeared for the final B.Com. degree examination of the Bangalore University under Register No. 8627371 in the month of April 1988 and passed in his first attempt. In the said examination, the petitioner was declared to have passed in II Class with the total marks of 355 having been scored by him out of possible 600 marks.

4. The petitioner claims to be a good student with a consistent performance all along in his academic career. According to the petitioner, his performance in the examination merited award of higher marks than awarded to him and this he attributes to negligent valuation of answer scripts and/ or compilation of marks awarded. According to the marks card issued to him, the petitioner is stated to have secured 44% marks in Mercantile Law, 60% marks in Business Organisation and Marketing and 40% marks in Auditing and Taxation. It is stated that, in 1982, the petitioner was awarded prizes for his outstanding performance in Mathematics, Accounts, Science and Social Studies and similarly in 1984 for his performance in Accountancy, Economics and Commerce. There are other achievements to his credits which may not be necessary to be adverted to.

5. The petitioner is aggrieved by what he calls as "undeserved devaluation of the petitioner's performance by the respondent" and, therefore, he submitted a comprehensive representation to the respondent, a copy of which is Ann-G dated 8-7-1988. In the representation, the petitioner indicated his consistently good performance all along up to final B.Com. degree examination, pointing out the damage likely to be caused to his future academic career and future prospects if the wrong done to him was not set right. Therefore, the petitioner prayed for a proper re-evaluation of his performance in the said subjects.

6. On revaluation of the answer scripts, as against 355 total marks awarded to him originally, the petitioner's marks rose to 384 out of possible 600 marks. The petitioner was, therefore, placed in I Class after revaluation, he having scored a total of 834 marks being the aggregate for I, II and III year B.Com. examinations.

7. Under letter dated 1-9-1988 which is Ann-I, before revaluation the respondent notified the names of candidates who secured the first ten ranks at the B.Com. final examination of Bangalore University taking into account the aggregate of marks secured in all the three years consisting of I year, II year and III year B.Com. examinations. According to the petitioner, respondent 2 scored 831 marks in the aggregate, whereas the petitioner secured 834 marks after revaluation. Therefore, according to the petitioner, he is entitled to be placed in the tenth rank in the place of respondent 2. Respondent 2 had been placed tenth in the ranking list.

8. On 3-9-1988, the petitioner submitted a representation, a copy of which is Ann.-J, with a request to respondent-1 to award him the rank to which he became entitled consequent to the petitioner having secured 834 marks over and above respondent-2. However, the representation of the petitioner did not meet with any response. It is stated that the petitioner was told by the officials of respondent-1 that in accordance with para 7 of the impugned notification, no revised rank shall be declared in respect of those who get benefit in the revaluation and no incidental benefit which accrued due to the revaluation will be granted except declaration of class. The petitioner was informed that relying on the said Notification, the petitioner was denied the tenth rank in the place of respondent 2. Therefore, the petitioner is aggrieved and has approached this Court.

9. I have heard the arguments of the learned counsel for the petitioner Col. V.K.K. Nair (Retired), Shri Shivraj Patil, learned Standing Counsel for the Bangalore University and Sri B. K. Chandrashekar, learned counsel appearing for respondent-2.

10. According to the learned counsel for the petitioner, respondent 1 is not justified in denying the tenth rank to the petitioner since the marks awarded to the petitioner on the basis of revaluation is, in turn, based on the actual performance of the petitioner on merits. The learned counsel contended that revaluation cannot be equated to a re-examination, but it was only an opportunity for rectifying any error committed in the valuation by revaluing the answer scripts and, therefore, the marks secured by the petitioner ultimately should be regarded as the marks awarded for his performance. It was argued that since the petitioner has secured more marks than respondent 2 who has been conferred with the tenth rank, the petitioner is entitled to be awarded tenth rank in the place of respondent-2. The other contention is that the impugned portion of the Notification is discriminatory and unconstitutional since it offends Art. 14 of the Constitution, It was also argued that the Notification is severable and, therefore, it is permissible to quash only the relevant portion which is assailed in this writ petition.

11. The learned counsel appearing for the 1st respondent submitted that the petitioner having agreed for revaluation subject to the conditions embodied in the Notification, it is not open to the petitioner to resile and to choose only what is convenient to him in the notification which governs the conditions of revaluation.

12. The learned counsel for respondent-2 pleaded that respondent-2 having already been awarded the tenth rank, will be exposed to substantial injury to her prospects if the petitioner is permitted to be substituted to her place as the tenth rank holder of Bangalore University. It was also pleaded that the petitioner cannot be given the benefit of the tenth rank since, according to the original valuation, respondent-2 had secured higher marks than the petitioner.

13. That the petitioner secured a total of 834 marks in the aggregate for the I, II and III year B.Com. examinations on revaluation of the answer scripts, is not in dispute. Whereas the petitioner is relying on his legal right in laying claim to the tenth rank, both the respondents are relying upon the impugned notification which denies any rank to the petitioner even if the petitioner has scored higher marks than any of the rank holders declared on the basis of the original valuation.

14. The impugned notification is issued under S. 38 of the Karnataka State Universities Act, 1976 by the Syndicate of the Bangalore University at its meeting held on 25-7-1985 as an amendment to the ordinances published in earlier notifications referred to in the impugned notification. The said notification is stated to be the Ordinance regarding revaluation (review) of answer scripts. According to para 7 of the impugned notification, no revised rank will be declared in respect of those who get the benefit of revaluation (review) and no incidental benefit which accrue from revaluation (review) will be granted except declaration of class. Whereas the petitioner was declared to have passed in II Class before revaluation, he was declared to have passed in I Class subsequent to revaluation. If the petitioner had secured 834 marks in the aggregate before the revaluation, there can be no doubt that he would have been awarded tenth rank instead of respondent 2. The petitioner is now denied the benefit of tenth rank not because the petitioner has scored less marks than respondent 2, but because para 7 of the impugned notification stands as an impediment to the petitioner.

15. The declaration of ten ranks in the B.Com. degree examination is a declaration of academic distinction of far-reaching benefits to the recipients in recognition of the meritorious and outstanding performance in degree. The ranking is exclusively based on performance in the examination not only in the final year, but also in the earlier examinations of I and II year B.Com. The sum total of the performance in all the three examinations determines the calibre of the examinees. In other words, the toil of three years and the creditable performance therein are reflected in the first ten ranks awarded to the students in B.Com. In my opinion, by the process of revaluation of the answer scripts, is determined the merit of the examinee concerned in his performance and there can be no distinction between original valuation and subsequent revaluation for the purpose of award of rank to the concerned examinee. What ultimately is discovered upon revaluation is the actual performance of the candidate and if the actual performance of the candidate fetches higher marks than what was awarded in the original valuation, it must hold good for the purpose of ranking. The artificial barrier created between valuation and revaluation does not stand the test of either fairness or reasonableness. If actual performance is the criteria, the petitioner should be entitled to the award of tenth rank no matter whether the marks secured by him were higher in revaluation when compared with the marks awarded to him under wrong valuation earlier. What is relevant for consideration is not the expression "review", but the actual performance of the candidate on merits. After revaluation, it is conceded beyond dispute that the petitioner by his performance is entitled to an aggregate of 834 marks and this

aggregate is higher than the aggregate marks secured by respondent 2. In my opinion, the declaration of the marks of the petitioner on review stands on firm ground and cannot be defeated by the unconscionable condition stipulated in the impugned notification. The petitioner, in relation to the ten rank holders including the 2nd respondent are persons who are similarly situated and belong to the same class and there can be no discrimination among them. There is no intelligible differentia for the discrimination between the petitioner and respondent 2 to exclude the petitioner for the benefit of ranking based on marks obtained in revaluation. The impugned portion of the notification is arbitrary and unreasonable. I, therefore, hold that the impugned notification to the extent to which it has been challenged is not valid in law and is unconstitutional, and violative of Art. 14 of the Constitution.

16. The Supreme Court held in the case of *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, that Art. 14 is more in the nature of an admonition to the State and does not directly purport to confer any right on any person as some of the other articles, example Art. 19 do. Art. 14 is an injunction to both the legislature and the executive. There can be no waiver of fundamental rights.

In the said case, S. A. Das, CJ and Kapur, J. stated in their opinion:--

"Art. 14 is, in form an admonition addressed to the State and does not directly purport to confer any right on any person as some of the other articles, e.g. Art. 19, do. The obligation thus imposed on the State, no doubt, enures for the benefit of all persons for, as a necessary result of the operation of this article, they all enjoy equality before the law. That is, however the indirect, though necessary and inevitable, result of the mandate. The command of the article is directed to the State and the reality of the obligation thus imposed on the State is the measure of the fundamental right which every person in the territory of India is to enjoy. The next thing to notice is that the benefit of this article is not limited to citizens but is available to any person within the territory of India. In the third place, it is to be observed that by virtue of Art. 12, "the State", which is, by Art. 14 forbidden to discriminate between persons, includes the government and Parliament of India and the government and legislature of each of State and all local or other authorities within the territory of India or under the control of the government of India. Art. 14 is, therefore, an injunction to both the legislative as well as the executive organs of the State and the other subordinate authorities. The Art. 14 protects us from both legislative and executive tyranny by way of discrimination. It seems to be absolutely clear on the language of Art. 14 that it is a command issued by the Constitution to the State as a matter of public policy with a view to implement its object of ensuring the equality of status and opportunity which every welfare State, such as India, is by her Constitution expected to do and no person can by any act or conduct relieve the State of the solemn obligation imposed on it by the Constitution. Whatever breach of other fundamental right a person may or may not waive, he

cannot certainly give up or waive a breach of the fundamental right that is indirectly conferred on him by this constitutional mandate directed to the State".

(underline supplied by me)

In the same decision Subbarao, J. points out:--

"Part III is therefore enacted for the benefit of all citizens of India, in an attempt to preserve to them their fundamental rights against infringement by the institutions created by the Constitution, for without what safeguard, the object adumbrated in the Constitution could not be achieved. For the same purpose, the said chapter imposes a limitation on the power of the State to make laws in violation of those rights. The entire part in my view has been introduced in public interest and it is not proper that the fundamental rights created under the various articles should be dissected to ascertain whether any or which part of them is conceived in public interest and which part of them is conceived for individual benefit. Part III reflects the attempt of the Constitution makers to reconcile individual freedom with State control. While in America this process of reconciliation was allowed to be evolved by the course of judicial decisions, in India the fundamental rights and their limitations are crystallised and embodied in the Constitution itself..... I would, therefore, hold that the fundamental rights incorporated in Part III of the Constitution cannot be waived".

He added:--

"If the doctrine of waiver is engrafted to the said fundamental principles, it will mean that a citizen can agree to be discriminated. When one realises that unequal positions are occupied by the State and the private citizen, particularly in India where illiteracy is rampant, it is easy to visualise that in a conflict between the State and a citizen, the latter may, by fear of force or hope of preferment give up his right. It is said that in such a case, coercion or influence can be established in a Court of law, but in practice it will be well nigh by impossible to do so. The same reasoning will apply to Arts. 15 and 16. Art. 17 illustrates the evil repercussions of the doctrine of waiver in its impact on fundamental rights. That article in express terms forbids untouchability and obviously, a person cannot ask the State to treat him as an untouchable". *Bheshwar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*,

17. Therefore, it cannot be said that merely because the petitioner has obtained the benefit of review subject to the condition imposed in the impugned notification, it is not open to the petitioner to seek the benefit of ranking also which is not available to him under the conditions imposed in the said notification. There can be no waiver of the fundamental right of the petitioner.

18. The classification made on the basis of review is unreasonable and offends Art. 14 of the Constitution. I do not see any force in the contention that the impugned portion of the notification is not severable. On the other hand, it is

possible to give effect to the notification without enforcing that portion of the notification which is challenged in this writ petition without doing violence to the remaining parts of the same notification. It is made clear that the petitioner is entitled not only to the declaration of class, but also to the declaration of his rank, if he falls within the first ten ranks of B.Com. degree examination of the Bangalore University.

19. The learned counsel for the petitioner relied on the decision in *Bhagat Ram Sharma Vs. The Himachal Pradesh University and Others*, In this case, the appellant had joined law classes in the H.P. University. Though he was declared successful in the fourth semester examination, he was not satisfied with the marks awarded in certain papers and, therefore, applied for revaluation in terms of the rule framed by the H. P. University. On revaluation, the appellant was awarded 822 marks out of 1300 marks in the four semesters and he also completed his examination in the first attempt. As a result of the marks scored by the appellant on revaluation, the appellant claimed a scholarship and gold medal. But the University resisted and denied the same to the appellant. It was held:--

"In view of the aforesaid discussion, we are of the view that the appellant who had secured more marks than respondent No. 4 after revaluation was entitled to the grant of scholarship and the gold medal. We are informed that the same has not so far been given to respondent No. 4 by the H.P. University and, therefore, the University can easily award the scholarship as well as the gold medal to the appellant."

In the said case, it was also held :--

"..... Hence the result declared upon the revaluation of certain papers of a candidate will date back to the date upon which the result of all the candidates including the appellant (whose papers had been revaluated) and others who had taken the examination with him, was declared. The Executive Council of the University had no authority to amend the ordinances retrospectively. It could only make alter or amend the Ordinances prospectively."

20. In *Manoj Kumar Jindal Vs. Ravishankar University, Raipur and Others*, it was held as follows:--

"..... There is no reason why after revaluation, if the petitioner is found to have obtained "first position", he should be continued to be ranked in "third position". This would be rank injustice to a student devoted to studies with meritorious performance. The object behind revolution is that every man should get his due which he deserves. That is the rule of law and also equity. This appears to be a case where the position in the Merit List entails consequential benefits also. Generally the toppers have further benefits not only of Division and Merit, but often Medals and Prizes. If that be so, it is all the worst that the petitioner is deprived of his legal right to such benefits. There is no reason why the petitioner should suffer for the fault of the University. There is no question of any legal

injury to the other two respondents just because under the rules relating to revaluation, they would be relegated from their positions Nos. 1 and 2, to positions Nos. 2 and 3. If the relegated No. 3 had any grievance, he could have availed of the provisions regarding revaluation within 30 days. It is not correct to say that amendment in the impugned Merit List would not be in the interest of public at large."

21. The learned counsel for respondent 2 attempted to draw support from Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, The decision relates to two groups of writ petitions, the first group consisting of cases where the right of inspection alone was claimed and the second group comprising of cases where the petitioners had claimed also the further right to demand a revaluation of the answer papers. It is in this context, the Supreme Court had occasion to consider the vires of a regulation made by the rule making authority and upheld the regulation expressing the following view:--

"In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution....."

Neither on facts, nor on law, there is analogy between the above decision relied upon and the instant case. In my opinion, the said decision is inapplicable to the facts of the case.

22. In the result, for the foregoing reasons, I pass the following:--

- (1) Rule is issued and made absolute;
- (2) The writ petition is allowed;
- (3) The following portion in para 7 of the impugned notification only is quashed:--

"No revised rank will be declared in respect of those who get benefit in the revaluation (review) and no incidental benefits which accrue due to the revaluation (review) will be granted."

(4) A direction is issued to respondent 1 to award the tenth rank to the petitioner in the place of respondent 2 in B.Com. degree examination held in April 1988 within thirty days from the date of receipt of copy of this order.

(5) A copy of this order shall be communicated to respondent 1 forthwith.

23. Petition allowed.