

(1980) 07 BOM CK 0011

In the Bombay High Court

Case No : Writ Petition No's. 1864, 1865, 1889, 1890, 1909, 1924, 1927, 2003, 2044, 2098 and 2176 to 2179 of 1980

Avadhani Meena Ramchandra and

APPELLANT

Vs

Maharashtra State Board of Secondary and Higher Secondary Education, Pune and etc.

RESPONDENT

Date of Decision : 29-07-1980

Acts Referred:

Constitution of India, 1950 — Article 133

Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 — Section 19

Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 — Regulation 102, 102(2), 102(3), 102(4), 104(1)

Citation : AIR 1981 Bom 126 : (1981) MhLj 54

Hon'ble Judges : Mohta, J;Deshpande, J

Bench : Division Bench

Advocate : D.S. Chopra, in W.P. No. 1909/80, M.P. Vashi, P.H. Wadhwaney, P.P. Pawar, B.P. Apte and Bharat B. Gupta, for the Appellant; Atul Setalwad, S.N. Vakharia and R.K. Kulkarni, instructed by Little and Co., D.S. Chopra, Addl. Govt. Pleader in W.P. Nos. 1864/80 and 1865/80, A.C. Agrawal, A.M. Salik, S.G. Deshmukh, W.S. Devnan and N.D. Bhatkar, Addl. Govt. Pleaders, for the Respondent

Judgement

Mohta, J.—These writ petitions and others in which my esteemed brother has delivered judgment just now were heard together. I am in agreement with the view that the Maharashtra Secondary and Higher Secondary Education Boards Regulations 1977, (for short "the Regulations") are in the nature of bye-laws and not statutory rates and that they are liable to be struck down as void to the extent they prohibit disclosure and inspection of answer books. I proceed to deal with the remaining topic relating to prohibition on revaluation.

2. In my judgment, apart from the fact that the prohibition on revaluation of answers is to a great extent integral part of the prohibition on disclosure or inspection of answer books in the whole scheme of the Regulations, it is also

manifestly unjust and illegal and has to be struck down. Indeed logical end of permitting inspection and disclosure of answer books and other documents is to permit revaluation.

3. Now it is beyond dispute, that every student has a right to receive fair play in examination and get appropriate marks matching with his performance, though he has no right to particular marks. Truism is that in the present context of fierce competition, unlike in recent past, even a fraction of percentage in marks can make or mar a career. Results of examinations conducted by the respondent Board are thus a turning point in the life of a student, as they are openings to various avenues of further studies and they can entail civil consequences. As Supreme Court has put in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,

"In its comprehensive connotation, every thing that affects a citizen in his civil life inflicts a civil consequence."

4. From Encyclopedia Britannica (1969 Edn.) one can gather that in medieval times students were examined at the end of their course by means of disputation in which they had publicly to expand and debate points. Proceedings were observed and individual student assessed by an examiner. Written examinations were introduced somewhere in 16th Century. In 19th Century formal written examinations became a regular feature. There was a time when even the name of a paper setter used to be disclosed on the question paper and none even thought of taking or giving advantage of this disclosure. Verification of marks was not provided for. As time passed, that practice of disclosure of name was stopped and verification process became part and parcel of examination process. Number of examinees was comparatively small and consequently the rush and pressure of work on examiners was also light. General standard of morality in the examinees, examiners, parents and indeed the whole society was higher. Attitude of the teacher and the taught towards each other was of consideration and respect. In those times it could not be even to be dreamt that students can play calculated frauds by interpolating the roll numbers and/or changing the internal pages of the answer books.

5. That presently such things were detected successfully at least in some cases, is admitted position. The Ex-Chairman of the respondent Board is reported to have given an interview on T.V. in "Chakravyuh" programme, explaining the modus operandi adopted by certain students in indulging in various types of frauds. It is certain that such interpolation or change is not possible without support of some responsible person from the Board either in charge of the examination centre or the office. Some writ petitions were filed challenging the results on these grounds and disposed off in favour of the petitioner-students. Newspaper reports, though from other division of the State, were read in open court disclosing that the answer books from certain centres have been sealed by order of Court, prima facie accepting the contention that some internal pages in the answer books were changed; as a result certain meritorious students were

adversely affected by failing to obtain their due marks. Certain examples were placed before us to demonstrate that even after official re-checking, the mistakes persisted and were finally detected only after further rechecking was insisted upon by the guardians. It is true as contended by Shri Setalwad, the learned Counsel for the Board that such instances are not many. High percentage is not as relevant as the fact of their existence. It is in this background and peculiar features of the changed times and not the orthodox and traditional, that the merits of the points raised on behalf of the petitioners will have to be measured. Before proceeding to do so we may notice that M/s. Chopra, Vashi and Apte, the learned Counsel for some of the petitioners have produced before us the recent Regulations framed by the Bombay University which permit reassessment of answer papers. We are also informed that many other universities have recognised in principle that a provision for reassessment is the felt necessity of the times and they have made necessary provisions. Thus it is obvious that the idea of revaluation in the education field is not considered to be obnoxious by the experts in the field. We may in fairness to those learned counsel record, that it was not their argument that on that account only prohibition on revaluation should be held, as void. It is also not disputed that ground of manifest unreasonableness must stand on its own strength and not on the court's or some other body's view of what is reasonable or prudent.

6. In the first place it may be noted that as per Regulation No. 102 (2) Divisional Board can amend result if it is affected by error or other matter of whatsoever nature. It reads as under:--

"In any case, where it is found that the result of the examination has been affected by error, malpractice, fraud, improper conduct or other matter of whatsoever nature, the Divisional Board, on the recommendation of the Standing Committee, shall have power to amend such result in such manner as shall be in accordance with the true position and to make such declaration as it may consider necessary in that behalf, provided that except as provided in Clause (3) below, no result shall be amended after the expiration of six months from the date of declaration of the results."

Thus this regulation refers to mistakes and irregularities of all types without making any exception about its nature. Even otherwise, no action which is the result of either mistake, fraud or total non-application of mind can be allowed to stand and/or affect a citizen. It is also accepted principle that there is no wrong without a remedy. No human institution can be infallible. Examiner is no exception. On account of various human factors such as pressure of work, mood, lack of energy, absent mindedness and many others list of which is inexhaustible, honest mistake in valuation can take place even if the allegations of malpractices of various types are ignored. It is true that in some cases the error, specially in respect of subjective answers may not be demonstrable. However, answers which are objective in nature stand on altogether different footing. There is only one particular answer and if it is given, the student is entitled to nothing short of full

marks.

7. There are mainly two types of written examinations-- (1) essay type or subjective and (2) objective (Encyclopedia Britannica 1969 Edn.). Answers of a fairly substantial length, written in the form of essays are required in the first type. In assessing these, the examiner inevitably exercises certain amount of subjective judgment. Answers of this kind cannot be assessed as wholly right or wholly wrong. They are usually awarded marks according to the extent to which the examiner considers that the candidate has introduced all the relevant facts or arguments or a sufficient number of them. The candidate's ability to write with clarity and precision, or even with what the examiner regards as a pleasing style, may also affect the result. Critics of the essay type examination have discerned a number of inadequacies and limitations in it. They maintain that the results of these examinations can be shown to be unreliable in that they depend to a large extent on the subjective judgment of the examiners. It has been demonstrated that the marks awarded to the same papers by different examiners vary significantly; and that a given examiner when invited to assess the same paper on two different occasions, is unlikely to award it the same marks. Precisely for these reasons, essay type examinations are considered less suitable and the modern trend is to have objective examinations, which stand on 3 different footing. It usually involves the combination of multiple-choice problems. Answers to certain questions are either Wholly incorrect or wholly correct They call for only one accepted response e. g. capital of a particular country or total of particular digits. We are informed that in many subjects the examination conducted by the Board is objective.

8. By operation of the relevant Regulations even such demonstrable or apparent mistakes in valuation will have to be perpetuated. Board is a public body doing public duties. One of its obligations as found from Section 19 of the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 is to conduct examination. Fairplay is the essence of every public obligation. In this connection the following passage from De Smith's Judicial Review of Administrative Action Fourth Edition Page 239 may be useful:

"The comparatively recent emergence of this use of the "duty to act fairly" may also enable the courts to tackle constructively procedural issues that have not traditionally been regarded as part of the requirements of natural justice. It may therefore be less confusing to say that an immigration officer or a company inspector or a magistrate condemning food as unfit for human consumption or an educational institution considering an application by a student for admission is obliged to act fairly rather than obliged to act judicially."

After all as a Division Bench of this Court has put it in the case of Blaise Louis and Others Vs. The Nagpur University, Nagpur and Another, examination is not merely going through a ritual. Its essence lies in fair appraisal of a person without any assistance from outside source. Absence of fairness in the matter of public duty is a civil wrong against those who are affected. Failure to perform

public duty is actionable In this connection De Smith at page 528 observes thus:

"One who has an immediate personal interest in the performance of public duty may bring an action for a declaration that a defendant has failed to perform his statutory duty although he has not committed a civil wrong that gives the plaintiff any right of action for damages against him."

This applies to act as well as omissions. But in this case, one need not rely upon that general abstract theory. Regulation 102 (2) in terms incorporates this principle of fairplay. But Regulation 104 (1) and (3) takes away that right by making an exception about mistakes or wrongs that may take place in valuation in spite of general provision in Regulation 102 (2) for correcting "error, malpractice, fraud, improper conduct or other matter of whatsoever nature". Terminology discloses that principle of ejusdem generis does not apply. Prohibition of revaluation, in my view, renders Regulation 102 (2) nugatory and ineffective as it seeks to draw unwarranted distinction between various types of mistakes and malpractices and restricts the operation only to a particular type. Therefore also prohibition on valuation cannot be allowed to stand.

9. After all as has been held in *Neminath v. Poona University* referred in (1973) 75 Bom LR 332 ordinary meaning of "verification" is to ascertain by proper means the truth or accuracy of the thing to be verified. The said process is not mechanical. In that case Ordinances framed by the Bombay University fell for consideration. Ordinance 131 is equivalent to Regulation 102 and Ordinance 134 is equivalent to Regulation No. 104. In fact scissor and paste operation seems to have been performed in lifting the phraseology of one and introducing it in the other. Though in somewhat different context, it has been observed that a mere mechanical checking up on three points from answers does not by itself enure for a student's benefit unless the result is amended in his favour under Ordinance No. 131. Ordinance 131 also speaks of mistake, malpractice, fraud and improper conduct and therefore the Executive Counsel is bound to take all these circumstances into account before amending the result. Thus before a result can be amended under Ordinance No. 131 the Executive Council is bound to consider both the apparent mistake in totalling the marks and so also the malpractice or other improper conduct which comes to its notice and then to amend the result if the circumstances justify it. In conclusion it is held that no restricted meaning can be attached to the terminology "to verify the candidate's answers". I find the approach impeccable.

10. There is one more aspect. There is a practice of standard answers being prepared by moderators for the guidance of the examiners and for achieving uniformity. Examiners are supposed to treat those answers as model and evaluation is supposed to take place on that basis. The possibility of mistakes even after that, is not only fairly conceded on behalf of the Board but indeed is recognised in the various pleas taken by the Board while indicating the method of conducting the examination and steps taken before final allotment of marks. As per return of the Board 20% of the answer books received from each examiner

are given the benefit of revaluation by moderators by internal process, before the results are declared. It is stated that those 20% mainly include cases of those who are on the border line of passing and failing and those who have secured marks over 800. In certain cases of very high percentage even second revaluation takes place. Thus admittedly element of chance very much exists in the system of moderation and this element is manifestly unjust as it can result into discrimination though unintended. It may be noted that certain institutions may be of very high standard, certain of low standard and certain of moderate standard. The guideline of 20% operates in respect of all these institutions irrespective of a proportion of the border line cases either on higher side or on lower side. Thus there can be discrimination even in border line cases.

11. Every Regulation has to stand the test of reasonableness. As is clear from the return of the Board and even the submissions made before us, the only justification and rationale pleaded in support of prohibition" is the administrative convenience and the huge number of examinees. Considering the stakes involved and the vital importance of the impact of result of examination on individual's life, it appears to be too insignificant a consideration. I fail to see how the case of an individual student can be affected by this consideration. With the increase in population and growing interest in education the number of examinees is bound to be increased. The increase in the number is inevitable and a right to fair examination cannot be denied on this basis. Can Board say that it will not hold examination in case the number of students appearing crosses a particular limit? It is obliged to permit every student to appear for the examination irrespective of this consideration. The machinery and the staff can be employed in anticipation. No doubt this will put pressure on the purse of the Board, but the Board can charge appropriate fees for doing the work on the principle of quid pro quo.

Thus the only rationale and justification pleaded before us that the task will be time consuming and gigantic, sounds hollow and the unreasonableness of Regulation cannot be salvaged by this consideration. After all, the very existence of right of the reassessment can serve as a check on arbitrariness, casualness, negligent attitude or even malpractice on the part of the examiner. The surest mode of making a man casual towards his duties is to make his action infallible.

12. Before closing I may also make reference to the point raised on behalf of the Board that Regulations relate to educational field and academicians" view in the mattes should not be disturbed. This is not a rule of law but of prudence. Firstly the question posed before us does not necessarily have only academic aspect. In this connection I can do no better than to quote the following passage from the decision of Supreme Court given in the case of Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others,

"But University organs, for that matter any authority in our system, is bound by the rule of law and cannot be law unto itself..... In short, while dealing with legal affairs which have an impact on academic bodies, the views of educational experts are entitled to great consideration, but not to exclusive wisdom".

13. We have already held that Regulations prohibiting inspection and disclosure are void. What useful purpose will be served by taking inspection and disclosure in case further right of revaluation is denied? After all right of inspection and disclosure is only the means and not the end in itself. The probable question from the student or his guardian that stares is -- What after visual inspection? Hence I see no justification whatsoever to restrict the obligation of correction of mistake only to verification and to exclude valuation from the operation of Regulation 102. Board is thus obliged to permit even revaluation and so also to provide for machinery and procedure making this implicit right effective. So also I do not think this right can arise only after demonstrating the error. This would amount to begging the question. This demonstration is also not practical in the absence of suitable forum, which by the very nature of things must consist of expert in the subject. It seems obvious that till there is prohibition there is no effective right and till machinery and procedure is not provided for, there is no effective remedy.

14. To conclude, prohibition on revaluation is also illegal and manifestly unreasonable. Regulation 104 (1) so far it prohibits revaluation and so also Regulation 104 (3) are hereby declared void and are hereby quashed.

Deshpande, J.

15. I agree with the conclusion but not without doubts and reservations.

16. The question whether adverse examination results involve any civil consequences or not may be a matter of dispute. That student community's future career is at stake in such examinations, however, cannot admit of any dispute whatsoever. The Board, empowered, to conduct examination, is under an obligation to ensure correctness of evaluation process, and elimination of the possibility of errors at any rate, flowing from negligence, casualness, indifference or possible acts of misconduct on the part of the examiners and others. I agree that the elaborate system evolved and indicated in the affidavit in reply, is not foolproof against the possible lapses of the examiners as also the other members of the supervising or clerical staff. Such rights being entirely the creatures of the Statute, i.e. the Act and the Regulations, we have to trace the required correctives within their four corners. In the group of cases just decided we could spell out a right of inspection from the right of verification under Regulation 104 (1) and from the corresponding obligation in the Board's power under Regulations 102 (3) and 102 (4). I have been however, diffident of spelling further right of revaluation from these regulations, though deteriorating standards of efficiency in the administration, impairs my confidence in the rule prohibiting such revaluation. In his very careful and exhaustive judgment my brother has however, traced such right in these very Regulations. Rather than allow my doubts to prevail and dissent, I prefer to agree with him in the above circumstances. ORDER

17. We make the Rule absolute in all cases and direct the Board to give

inspection and allow applications for revaluation as also applications for verifications and thereafter to take necessary action in terms of Regulations Nos. 4 to 6 of Regulation No. 104. It will be open for the Board to frame necessary Regulations for giving effect to our directions. In the circumstances of the case there will be no order as to costs.

18. Mr. Vakharia, the learned advocate for one of the respondents applied for leave to appeal to the Supreme Court under Article 133 of the Constitution. Leave refused.

19. Operation of the order however, will be stayed for one week from the date we sign the judgment.

20. Mr. Setalwad made a statement before us that subject to the result of appeal to the Supreme Court inspection and revaluation will be granted to all those students who had made applications irrespective of whether they approached the Court or not.

21. On the motion made by Shri Setalwad, appearing for respondent No. 1 in the presence of the advocates for the petitioners, the stay is extended up to 20th August, 1980 and it is made clear that the relief of revaluation will be given to those who apply for the same within one month from 20th August, 1980

22. Petitions allowed.