

(2017) 02 DEL CK 0038

In the Delhi High Court

Case No : LPA No. 477 of 2015 and CM No.13119 of 2015 (stay)

Central Board of Secondary Education

APPELLANT

Vs

Samarth Mittal

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Delhi School Education Act, 1973 — Section 43

Citation : (2017) AIR(Delhi) 43 : (2017) 238 DLT 374

Hon'ble Judges : Sangita Dhingra Sehgal, J.

Bench : Single Bench

Advocate : Appearance not given, for the Respondent No. 1; Bharathi Raju, CGSC and Mr. Satya Ranjan Swain, GP, for the Respondent No. 2/UOI; Mr. Amit Bansal with Ms. Seema Dolo, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

Sangita Dhingra Sehgal, J. - The Letter Patent Appeal No. 477/2015 has been filed against the order dated 06.07.2015 passed by the Learned Single Judge in WP.(C) No. 6170/2015 and the Letter Patent Appeal No. 831/2015 has been filed against the order dated 08.09.2015 passed by the learned Single Judge in WP. (C) No. 7599/2015 whereby both the writ petitions were allowed.

2. Since the present appeals involve issues arising from the notification dated 26.05.2015 issued by the Comptroller of Examination, the same have been heard together and are being disposed of by a common judgement.

3. By the present appeals, the appellants seek to impugn the order dated 06.07.2015 and 08.09.2015 of the Learned Single Judge in W.P.(C) No. 6170 of 2015 and W.P. (C) No. 7599 of 2015 by which order the writ petition of the respondents in W.P.(C) No. 6170 of 2015 were allowed and the petitioner was directed to re-evaluate the answer sheet of the theory examination of the respondent No.1 in the subject of physical education in accordance with the Bye-law and the Circular and any other rules applicable. In W.P. (C) No. 7599 of

2015, the notification dated 26.05.2015 issued by the Comptroller of Examination was ordered to be quashed and the appellants were further directed to act according to its extant policy framed in that behalf and the re-evaluation of twelve questions was granted to the respondent No.1.

4. The brief facts of the Appeal No. 477/2015 are that the respondent No. 1 appeared in class XII examination conducted by CBSE, the result of which was declared on 25.05.2015. He had obtained 95 marks each in four subjects viz., English Core, Mathematics, Physics and Chemistry. However, the respondent No.1 had obtained 72 marks in the subject of Physical Education wherein he scored 30 marks out of a total of 30 marks allocated for practical exam whereas in the theory paper the respondent had been awarded 42 marks out of 70 marks. Due to unexpected low scores awarded to the respondent No.1 in the subject of Physical Education(Theory Paper), he decided to get his answer sheet re-checked. The policy of CBSE provides for three provisions, i.e. modalities/stages for re-checking of answer sheet of a candidate at three levels after declaration of Class XII examination results:

- (i) Verification of marks;
- (ii) Obtaining photocopy of the evaluated answer book; and
- (iii) Re-evaluation.

On application for verification the board did not find any mistake in calculation of the marks. Thereafter the respondent No.1 made an application for obtaining the photocopy of the answer book. Thereon, he wanted to make an application to the CBSE after paying the requisite fee, for re-evaluation of the answer sheet of his Physical Education theory paper. However, the respondent was informed by CBSE that though there is a policy for re-evaluation such policy does not include re-evaluation of the subject Physical Education.

5. The brief facts of present Appeal No. 831/2015 as observed in the writ petition, are as under:-

"The brief facts, which obtain in the present case, and have led to the filing of the present petition, are as follows:

2.1 The petitioner's son, Mr Priyank Dhingra, took his class XII examination; the result with respect to which was declared by respondent no.1 on 25.05.2015. The impugned notification thereafter got issued on 26.05.2015.

2.2 To be noted, prior to the issuance of the impugned notification dated 26.05.2015, a notification was issued by respondent no.1 whereby, amendments/ additions were made to the examination bye-laws. This notification is dated : 11.03.2015. The notification dated 11.03.2015 allows the examinee to seek re-evaluation of Senior School Certificate (Class XII) exams in the "manner" as prescribed by respondent no.1 from time to time.

2.3 It is in the background of these notifications, that the petitioner, filed an

application on 27.05.2015 to seek verification/ re-totalling of the marks pertaining to the Business Studies (Theory) paper. Evidently, in the verification i.e. totalling of marks, no mistake was found; a fact which was communicated to the petitioner by respondent no.1, on 03.06.2015.

2.4 Immediately thereafter, on 12.06.2015, the petitioner filed an application to obtain a photocopy of the answer sheet pertaining to the Business Studies (Theory) paper. The answer sheet was also downloaded by the petitioner, on 17.06.2015.

2.5 Consequent thereto, on 19.06.2015, the petitioner made an application to the Chairman, Regional Director and the Controller of Examination (CBSE) for re-evaluation of the answer sheet. This was apparently an online application. It appears, a second application was made with respect to the re-evaluation, on 23.06.2015. The second application, I am told, was an off-line application.

2.6 As requested, re-evaluation was conducted and, the result of re-evaluation was declared by the respondent on 26.06.2015. The petitioner was issued a revised mark-sheet on 30.06.2015. Consequent to the revision in the mark-sheet, the marks allotted to the petitioner's son i.e. Mr Priyank Dhingra, concerning the Business Studies (theory) Paper A, were enhanced from 49 to 71. The consequent effect of which, was that, the total marks accorded to Mr Priyank Dhingra, in the subject Business Studies, which included theory as well as well as the practical portion, increased from 69% to 91%.

2.7 The petitioner's request for re-evaluating the questions beyond the limit of ten (10) questions, provided in the impugned notification, which was made in the letter dated 19.06.2015, addressed to the Regional Director of respondent no.1, was rejected on 02.07.2015.

2.8 Consequently, vide a letter of even date i.e. 02.07.2015, the petitioner lodged a complaint with the Chairperson of respondent no.1. It was sought to be articulated in the application that, negligence had occurred, on the part of the examiner, and hence re-evaluation should be ordered in respect of additional twelve (12) questions as well; the details qua which are provided hereinabove.

2.9 The aforesaid letter was followed by yet another communication dated 03.07.2015, whereby the petitioner sought preservation of the original answer sheet pertaining to Business Studies (theory) paper.

3. Evidently, since no relief was forth coming, the instant writ petition was filed by the petitioner under Article 226 of the Constitution."

6. Mr. Amit Bansal, learned counsel for the appellants has strongly urged that the impugned order passed by the learned Single Judge is wholly erroneous and contrary to the settled principles of law. It was contended that as per Rule 61 of the Examination Bye-laws laid down by the appellant as stood earlier, re-evaluation of answer-books were impermissible. It was further contended that the revaluation policy dated 26.05.2015 laid down by the appellant is not

contrary to Rule 61 of the Examination Bye-law and the same had to be read harmoniously.

7. Learned counsel further urged that the learned Single Judge failed to take into consideration that the revaluation policy of 2015 was limited to selective subjects for a reason and subject of physical education was not covered therein. The reason explained by the counsel was that it would result in the possibility of large number of students seeking revaluation which would cause great difficulty to the appellants.

8. Learned counsel for the appellants further urged that the notification dated 26.05.2015 issued by the appellants permitted revaluation of answers to 10 questions and thus the revaluation was permitted. It was further urged that the learned Single Judge failed to take into account the practical difficulties involved in providing re-evaluation in all subjects as the appellant has to maintain more than one crore answer books of students and it would be a task of gigantic magnitude if the appellant's revaluation policy covered revaluation in all subjects.

9. Learned counsel for the appellant further contended that the learned Single Judge erred in quashing the notification dated 26.05.2015 and has completely overlooked the settled proposition of law. He further contended that the learned Single Judge had failed to take into consideration that the administrative decision to allow revaluation in selective subjects has been taken after giving due consideration to all the relevant factors i.e number of students appearing in each subject, fiscal resources and manpower at the disposal to conduct revaluation.

10. To substantiate his arguments learned counsel relied upon the principle of law laid down by the Hon''ble Supreme Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupesh Kurmarsheth and ors. reported in AIR 1984 SC 1543.

11. Per Contra, learned counsel for the respondents submitted that very sound and cogent reasons have been assigned by the learned Single Judge while passing the impugned judgments and no interference is called for.

12. Learned counsel further submitted that the impugned notification dated 26.05.2015 had been issued in total contradiction to the scope and constitutional framework of the amended Examination Bye-law and thus Rule 3 (ii) of the aforesaid notification was rightly quashed.

13. The learned counsel further submitted that the expression "manner as prescribed" appearing in the amended Rule 61 of the Examination Bye-law of the appellant did not give inherent power to the Appellant to prescribe restrictions as to the number of questions for re-evaluation or so as to exclude subjects.

14. We have heard learned counsel for the parties and also examined the judgments in detail rendered by the learned Single Judge.

15. The issues that arise in this appeal for our consideration are two fold:

(i) Whether Rule 61 of the Examination Bye-law as amended by CBSE vide notification dated 26.05.2015 was right in restricting the re-evaluation of selective subjects?

(ii) Whether the notification dated 26.05.2015 could restrict the number of questions sought to be reevaluated as mentioned in Rule 3 (ii)?

16. It is pertinent to mention herein that w.e.f. 2014 CBSE had decided to introduce the provision of "Re-evaluation" at the Senior Secondary level (Class XII) in addition to the provisions of Verification of Marks and obtaining of photocopy of evaluated answer books which were already in existence. At the outset, we deem it appropriate to reproduce Rule 61 as it existed and also the amended Rule 61 of the Examination Bye-law. The relevant portion of Rule 61 as existed before amendment reads as under:

"No revaluation of the answer book or supplementary answer book(s) shall be done."

17. Rule 61 of the Examination Bye-law as amended reads as under:

"For Senior School Certificate (Class XII) Examination, a candidate may also apply for revaluation in the manner as prescribed by the Board from time to time.."

18. The notification dated 26.05.2015 issued by the Comptroller of Examination, CBSE with respect to re-evaluation inter alia provides as under:

"3. Revaluation

(i) Only those candidates who have applied for obtaining photocopy of the evaluated answer book shall be eligible to apply for revaluation or challenge the marks awarded to any question (s) in the following subjects only.

English Core, English Elective, (CBSE), English Elective (NCERT), Hindi Core, Hindi Elective, Mathematics, Physics, Chemistry, Biology, Business Studies, Economics, Accountancy.

(ii) Request for maximum 10 questions shall be entertained only for theory portion in the above subjects @Rs 100/- per question-."

19. The legal position regarding interpretation of the expression "manner as prescribed" has been discussed in the judgment *Shankarlal Aggarwal v. Shankarlal Poddar* reported in 1964 (1) SCR 717, which has also been relied by the learned Single Judge and is reproduced as under:

"17.... We thus agree with Chagla, C.J. that the second part of the section which refers to "the manner" and "the conditions subject to which appeals may be had" merely regulates the procedure to be followed in the presentation of the appeal and of hearing them, the period of limitation within which the appeal is to be presented and the forum to which the appeal would lie and does not restrict or impair the substantive right of appeal which has been conferred by the opening

words of that section. We also agree with the learned Judges of the Bombay High Court that the words "order or decision" occurring in the 1st part of section 202, though wide, would exclude merely procedural orders or those which do not affect the rights or liabilities of parties. Learned Counsel for the appellant did not suggest that if this test were applied the order of the learned Company Judge would be an order or decision merely of a procedural character from which no appeal lay."

20. In *Mahindra & Mahindra Ltd. v. Union of India* reported in 1979 (2) SCC 529, the Hon"ble Apex Court held as under:

"12. That takes us to a consideration of the merits of the appeal and the first question that arises on the merits is as to the true scope and magnitude of the curial power conferred on the Commission under Section 13(2). That section provides that "any order made by the Commission may be amended or revoked at any time in the manner in which it was made". The words "in the manner in which it was made" merely indicate the procedure to be followed by the Commission in amending or revoking an order. They have no bearing on the content of the power granted under Section 13(2) or on its scope and ambit. That has to be determined on an interpretation of Section 13(2) in the light of the context or setting in which it occurs and having regard to the object and purpose of its enactment."

21. Returning to the facts of the present case, the learned counsel for the appellant has placed reliance on the case of *Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupesh Kurmarsheth and ors.* Relevant paras of the judgment reads as under:

"21. The legal position is now well-established that even a bye- law cannot be struck down by the Court on the ground of unreasonableness merely because the Court thinks that it goes further than "is necessary" or that it does not incorporate certain provisions which, in the opinion of the court, would have been fair and wholesome. The Court cannot say that a bye-law is unreasonable merely because the Judges do not approve of it. Unless it can be said that a bye-law is manifestly unjust, capricious, inequitable, or partial in its operation, it cannot be invalidated by the Court on the ground of unreasonableness..

22. ..In making, the above observations, the High Court has ignored the cardinal principle that it is not within the legitimate domain of the Court to determine whether the purpose of a statute can be served better by adopting any policy different from what has been laid down by the legislature or its delegate and to strike down as unreasonable a bye-law (assuming for the purpose of discussion that the impugned regulation is a bye-law) merely on the ground that the policy enunciated therein does not meet with the approval of the court in regard to its efficaciousness for implementation of the object and purposes of the Act.

29... As has been repeatedly pointed out by this court, the court should be extremely reluctant to substitute its own views as to what is wise, prudent and

proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day to day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and a purely idealistic approach to the problems of this nature isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible avoid any decision or interpretation of a statutory provision, rule or Bye-law which would bring about the result of rendering a system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the high Court while deciding the instant case.

30. In the light of the foregoing discussion, we hold that the High Court was in error in striking down Clauses (1) and (3) of Regulation 104 as illegal, unreasonable and void. We uphold the validity of these provisions."

22. In the aforesaid judgment the Apex Court held that the High Court was in error in striking down clause (1) and (3) of the Regulation 104 as illegal, unreasonable and void and upheld the validity of these provisions. A number of disappointed candidates who appeared for the Higher Secondary Certificate and Secondary School Certificate public examinations conducted by the Divisional Boards functioning under the supervision and control of the Maharashtra State Board of Secondary and Higher Secondary Education filed a batch of 39 Writ Petitions in the High Court of Bombay challenging the validity of Regulation 104 (3) of the Maharashtra Secondary and Higher Secondary Education Boards Regulations 1977 and seeking the issuance of writs directing the Board to allow to the petitioners disclosure and inspection of their answer books in the Public examination, the results whereof had already been published and to conduct a re-evaluation of such of the answer papers as the petitioners may demand after the inspection. The question canvassed in these appeals was whether, under law a candidate has a right to demand inspection, verification and re-evaluation of answer books and whether the statutory regulations framed by the Maharashtra State Board of Secondary and Higher Secondary Education governing the subject insofar as they categorically state that there shall be no such right can be said to be ultra vires, unreasonable and void.

23. Further, it was also held that a bye law could not be struck down by the Court on the ground of unreasonableness unless it could be said that a bye law is manifestly unjust, capricious, inequitable, or partial in its operation. In the relied judgment Regulation 104 (1) expressly stated that no revaluation of the answer-book or supplements shall be done. Additionally, Regulation 104 (3) stated No candidate shall claim, or be entitled to revaluation of his answer-books or other documents as these are treated by the Divisional Board as most confidential.

24. Comparing the facts of the present case with that of Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh

Bhupesh Kurmarsheth and Ors., it is clear that the two cases are totally different. In the aforementioned judgment as per Regulation 104 there was a specific ban on the students to seek re-evaluation and hence no candidate could seek re-evaluation of the answer book whereas in the present appeals Rule 61 of the amended Examination Bye-law permitted the students to apply for re-evaluation but restricted the number of questions and the subjects to be re-evaluated. In the instant case the rules vide notification dated 26.05.2015 are different as it is abundantly clear that the intention of the CBSE was to allow reevaluation and thus in our view the judgment of the Supreme Court relied upon by the learned counsel for the appellant in the case of Maharashtra State Board of Secondary and Higher Secondary Education and another. v. Paritosh Bhupesh Kurmarsheth (supra) is not applicable to the facts and circumstances of the present case.

25. It is rather eccentric to first provide for the facility of re-evaluation to the candidates and thereafter put unreasonable restrictions. The Board cannot afford to ignore individual claims of re-evaluation at its whim or fancy, by merely "pick and choose" of subjects or number of questions. Therefore, the rules in question pursuant to the amended Bye-law is manifestly unjust, unreasonable, partial in its operation. Significantly, in the present case the particular Rules in impugned Notification suffered from legal infirmity in the sense that it was totally inconsistent to the amended Rule 61 of the Examination Bye-law. It would lead to discontentment and frustrations if the students who put in a lot of effort do not get the results they expect. It should be their prerogative to get their answer sheets re-evaluated in order to ensure proper assessment was done.

26. From the perusal of the material placed on record, we are of the considered view that it was completely within the competence as well as the duty of the CBSE to apply its mind and decide as a matter of policy relating to the facility of re-evaluation of the answer sheets prior to the issuance of the amended Bye-law. In the instant case the notification issued by the Comptroller of examination dated 26.05.2015 is administrative in nature and cannot supersede the examination Bye-law. The Bye-law as amended w.e.f 11th March, 2015 permitted a candidate to apply for re-evaluation for Senior School Certificate (Class XII) in the manner as prescribed by the Board from time to time. The word "manner" has to be interpreted as the procedure that has to be followed for the purposes of re-evaluation and cannot be interpreted in the restrictive sense so as to exclude any particular subject. The learned Single Judge rightly relied upon the judgment of Dhanjibhai Ramjibhai v. State of Gujrat reported in (1985) 2 SCC 5, which read as under:

"7. It is next urged that as no rules have been framed indicating the manner for extending the period of probation, there is no power to extend the period of probation. The argument suffers from a fallacy. The power to extend the period of probation must not be confused with the manner in which the extension may be effected. The one relates to power, the other to mere procedure. Merely because procedural rules have not been framed does not imply a negation of the

power. In the absence of such rules, it is sufficient that the power is exercised fairly and reasonably, having regard to the context in which the power has been granted."

27. The Statutory Bye-law as amended w.e.f. 11.03.2015 permitted re-evaluation of answer sheets and therefore, the whole purpose for providing a right of re-evaluation to a candidate would be denied if it is restricted to any particular subject only or for that reason restricted to only certain number of questions in a particular subject. The notification intending to prohibit more than 10 questions qua which, a candidate could seek re-evaluation is violative to the rules of fair play, it is unjust and partial in its operation. Accordingly we uphold the order dated 08.09.2015 passed by Learned Single Judge whereby the impugned notification dated 26.05.2015 was quashed to the extent of limitation provided therein of the evaluatory process to 10 questions. We also uphold the order dated 06.07.2015 passed by Learned Single Judge and further clarify that the rule allowing the eligible candidates to apply for re-evaluation would include the subjects for which the candidates have appeared in apart from the subjects given in the Rule 3 (i) of the abovementioned notification.

28. In view of the above facts and circumstances, we see no reason to interfere with the judgments passed by the learned Single Judge. The appeals are accordingly dismissed.

CM No. 13119/2015 (stay)

29. In the view of the aforesaid order this application is rendered infructuous.