

(2013) 09 KAR CK 0076

In the Karnataka High Court

Case No : Writ Petition No's. 18124, 26631, 27706, 27832 to 27837, 27838, 27944, 28330, 28399, 29097, 29313, 29314, 29319, 29347, 30323, 31027, 31500, 32323, 32380, 32381, 32616, 33079, 34097, 34124, 35035, 35128, 35538, 35539, 35541, 78007 to 78012, 102081 and 10

Chandrakala B. and Others

APPELLANT

Vs

High Court of Karnataka and Another

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Right To Information Act, 2005 — Section 10, 4(1)(b), 4(1)(c), 9

Citation : (2013) 6 KarLJ 97

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : Sriyuths S. Krishna Swamy, V.B. Siddaramaiah, Onkar K.B., Vivek Reddy for K.N. Subba Reddy, Ranganatha S. Jois, Satyanarayana P. Hogade, K.G. Lakshmipathi, G.K. Patel, Shashidhar Belagumba, Prakash Andanimath, Shivakumar D.A., Jayakumar S. Patil, M. Chidananda Kumar, Ajay R. Anneppanavar, Gowthamdev C. Ullal, Sharanabasappa M. Patil, Baliga B.M., Prasanna B.R., Aruna Shyam M., Chandrakanth R. Goulay, Tejavathi J., Sathyanarayan Bhatt Joshi and Satish M. Doddamani, for the Appellant; Sriyuths Raghavendra G. Gayathri, Additional Government Advocate, D.M. Nanjunda Reddy for Smt. Sanjana Reddy, for the Respondent

Judgement

H.N. Nagamohan Das, J.—Petitioners in all these writ petitions are unsuccessful candidates in the main examination conducted by the respondents for recruitment of Civil Judges. Respondents are common in all these writ petitions. Different prayers are made in different writ petitions. The sum and substance of the prayers in all these writ petitions is as under:

- (i) To issue a writ in the nature of mandamus directing the respondents to re-total the marks secured by the petitioners;
- (ii) To issue a writ in the nature of mandamus to furnish Xerox copies of answer scripts written by the petitioners;

(iii) For a writ of mandamus to revalue the answer scripts of the petitioners in failed subjects in terms of the representations given by them;

(iv) To quash the entire process of conducting the main written examination insofar as petitioners are concerned on the ground that Kannada question papers are not furnished;

(v) To quash the main examination of Law Paper II under the heading "Frame proper and necessary issues with the following pleadings" assigned 25 marks and to direct to issue fresh question paper to that extent.

Respondents issued notification on 6-8-2011 inviting applications from eligible candidates to fill 152 posts of Civil Judges. This notification further specifies that there will be a preliminary examination followed by main examination and thereafter viva voce. Petitioners and others submitted their applications. On processing the applications intimation was sent to the petitioners and others to appear for preliminary examination on 8-12-2012. Petitioners are successful in the preliminary examination. Thereafter respondents issued intimation calling upon the petitioners and others to appear for the main examination on 13th and 14th of April, 2013. Accordingly, the petitioners and others appeared for the main examination. After valuing the answer scripts, the respondents notified the eligibility list for viva voce in their website on 10-6-2013. To the shock and surprise of the petitioners it was found that they have failed in some of the subjects. In the circumstances, petitioners approached the respondents for retotalling of the marks, to furnish copies of answer scripts and for revaluation. Since the respondents refused to entertain the request of the petitioners, they are before this Court seeking the above mentioned reliefs.

2. Respondent-High Court of Karnataka filed their statement of objections inter alia contending that they have conducted the preliminary examination and the main examination strictly in terms of provisions of the Karnataka Judicial Service (Recruitment) (Amendment) Rules, 2011 (hereinafter referred to as "the Rules"). Even the valuation and totalling of answer scripts of petitioners and others are strictly done in terms of the Rules and there are no lapses or illegalities. The Rules do not provide for retotalling, providing Xerox copies of answer scripts and revaluation. The setting up of question papers is in accordance with the Rules and there are no illegalities. Furnishing of question papers in Kannada language is not mandatory and the same has not resulted in any inconvenience or loss to the petitioners. Therefore the respondents pray for dismissal of writ petitions.

3. Heard arguments on both the side and perused the entire writ papers.

On Prayer (i)

4. On 25-7-2013 learned Counsel for the respondent-Registrar General made a submission and this Court passed an order as under:

Sri. D.M. Nanjunda Reddy, learned Senior Counsel for the respondent-Registrar General submits that in the event of any of the petitioners applying for re-

totalling, then they will re-total their answer sheets and issue necessary endorsement. Submission of the learned Senior Counsel is placed on record. Petitioners who are interested may apply for re-totalling to the respondent-Registrar General. The Registrar General is hereby directed to consider the applications, re-total the answer sheets of the respective petitioners and issue endorsement to that effect.

5. In terms of the above order some of the petitioners have submitted their applications for retotalling their answer scripts. Accordingly, the respondent retotalled the marks secured by the applicants and issued necessary endorsements. If any of the petitioners have not applied for retotalling they are entitled to apply. Even if the respondents have rejected the applications for retotalling, such applicants are also entitled to apply for retotalling. In that event the respondent-Registrar General to retotal the answer scripts and issue necessary endorsement. In view of this development Prayer No. (i) in the writ petitions no longer need be addressed.

On Prayer (ii)

6. Some of the petitioners have applied for the Xerox copies of answer scripts written by them and the respondents issued endorsements rejecting the same. Some of the petitioners have filed appeals against the endorsement before the First Appellate Authority and they are pending consideration. Petitioners are seeking Xerox copies of the answer scripts under the provisions of the Right to Information Act, 2005. The Supreme Court in *The Institute of Chartered Accountants of India Vs. Shaunak H. Satya and Others*, held as under:

The information to which RTI Act applies falls into two categories, namely: (i) information which promotes transparency and accountability in the working of every public authority, disclosure of which helps in containing or discouraging corruption, enumerated in clauses (b) and (c) of Section 4(1) of RTI Act; and (ii) other information held by public authorities not falling u/s 4(1)(b) and 4(1)(c) of RTI Act. In regard to information falling under the first category, the public authorities owe a duty to disseminate the information widely suo motu to the public so as to make it easily accessible to the public. In regard to information enumerated or required to be enumerated u/s 4(1)(b) and 4(1)(c) of RTI Act, necessarily and naturally, the Competent Authorities under the RTI Act, will have to act in a proactive manner so as to ensure accountability and ensure that the fight against corruption goes on relentlessly. But in regard to other information which do not fall u/s 4(1)(b) and 4(1)(c) of the Act, there is a need to proceed with circumspection as it is necessary to find out whether they are exempted from disclosure. One of the objects of democracy is to bring about transparency of information to contain corruption and bring about accountability. But achieving this object does not mean that other equally important public interests including efficient functioning of the Governments and public authorities, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, etc., are to be ignored or sacrificed. The object of RTI Act is to

harmonize the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the Governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, on the other hand. While Sections 3 and 4 seek to achieve the first objective, Sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore, when Section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals. Therefore in dealing with information not falling u/s 4(1)(b) and 4(1)(c), the Competent Authorities under the RTI Act will not read the-exemptions in Section 8 in a restrictive manner but in a practical manner so that the other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding the other public interests.

7. In view of the law declared by the Apex Court in the judgment referred to supra, it is obligatory on the part of the respondents to provide information u/s 4(1)(b) and 4(1)(c) of RTI Act. Further Section 8 of the Act exempted certain categories of information from disclosure. It is not shown to me under which category the respondents are exempted from disclosure of the information sought for by the petitioners. If for any reason, the respondents have refused to furnish the information sought for by the petitioners, then the petitioners are entitled to work out their remedy under the provisions of the Right to Information Act. Indeed, in the present case some of the petitioners who are aggrieved by the refusal endorsements issued by the respondents have filed first appeals and they are pending consideration. The First Appellate Authority to consider the appeals filed by some of the petitioners in terms of the Right to Information Act.

8. Learned Senior Counsel Sri. D.M. Nanjunda Reddy for respondent submits that they will show the answer scripts to the Advocates for petitioners and not to the petitioners. Some of the petitioners are willing and some of the petitioners are not willing to the proposal made by the Senior Counsel for respondent. Such of the petitioners who are willing may ask their Advocates to approach the respondent-Registrar General of High Court and in that event the answer scripts of the petitioners be shown to their respective Advocates.

On Prayer (iii)

9. It is necessary to notice the law laid down by the Supreme Court on the question of revaluation of the answer scripts. The Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, held as under:

26. We are unable to agree with the further reason stated by the High Court that

since "every student has a right to receive fair play in examination and get appropriate marks matching his performance" it will be a denial of the right to such fair-play if there is to be a prohibition on the right to demand revaluation and unless a right to revaluation is recognised and permitted there is an infringement of rules of fair play. What constitutes fair play depends upon the facts and circumstances relating to each particular given situation. If it is found that every possible precaution has been taken and all necessary safeguards provided to ensure that the answer books inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with and that the evaluation is done by the examiners applying uniform standards with checks and cross-checks at different stages and that measures for detection of malpractice, etc., have also been effectively adopted, in such cases it will not be correct on the part of the Courts to strike down the provision prohibiting revaluation on the ground that it violates the rules of fair play. It is unfortunate that the High Court has not set out in detail in either of its two judgments the elaborate procedure laid down and followed by the Board and the Divisional Boards relating to the conduct of the examinations, the evaluation of the answer books and the compilation and announcement of the results. From the affidavit filed on behalf of the Board in the High Court, it is seen that from the initial stage of the issuance of the hall tickets to the intending candidates right upto the announcement of the results, a well-organised system of verification, checks and counter-checks has been evolved by the Board and every step has been taken to eliminate the possibility of human error on the part of the examiners and malpractices on the part of examinees as well as the examiners in an effective fashion. The examination centres of the Board are spread all over the length and breadth of each Division and arrangements are made for vigilant supervision under the overall supervision of a Deputy Chief Conductor in charge of every sub-centre and at the conclusion of the time set for examination in each paper including the main answer book all the answer books and the supplements have to be tied up by the candidate securely and returned to the Supervisor. But before they are returned to the Supervisor, each candidate has to write on the title page of main answer books in the cages provided for the said particulars, the number of supplements attached to the main answer book. The Supervisor is enjoined to verify whether the number so written tallies with the actual number of supplements, handed over by the candidate together with his main answer book. After the return of all the answer books to the Deputy Chief Conductor, a tally is taken of the answer books including supplements used by the candidates by the Stationery Supervisor who is posted by the Board at each sub-centre. This enables the supervisory staff at a sub-centre to verify and ensure that all answer books and supplements issued to the candidates have been turned in and received by the supervisory staff. At this stage of checking and double-checking, if any seat number has been duplicated on the answer books by mistake or by way of deliberate malpractice it can be easily detected and corrective measures taken by the Deputy Chief Conductor or the Chief Conductor. The answer books are then sent by the Deputy Chief Conductor to the

Chief Conductor in charge of the main centre. He sorts out the answer books according to the instructions issued by the Board and sends them to the examiners whose names had been furnished in advance except in the case of the science subjects, namely, "mathematics and statistics, physics, chemistry and biology". The answer books in the science subjects are forwarded by the Chief Conductor under proper guard to camps in Pune already notified to the Chief Conductors. The further procedure followed in relation to the valuation of the answer books has been explained in paragraphs 22 to 26 of the counter-affidavit dated 10th July, 1980 filed in the High Court by the Joint Secretary to the Pune Divisional Board of Secondary Education. We do not consider it necessary to burden this judgment with a recapitulation of all the details furnished in those paragraphs, and it would suffice to state that the procedure evolved by the Board for ensuring fairness and accuracy in evaluation of the answer books has made the system as fool proof as can be possible and it meets with our entire satisfaction and approval. Viewed against this background, we do not find it possible to agree with the views expressed by the High Court that the denial of the right to demand a revaluation constitutes a denial of fair play and is unreasonable. The Board is a very responsible body. The candidates have taken the examination with full awareness of the provisions contained in the Regulations and in the declaration made in the form of application for admission to the examination they have solemnly stated that they fully agree to abide by the regulations issued by the Board. In the circumstances, when we find that all safeguards against errors and malpractices have been provided for, there cannot be said to be any denial of fair play to the examinees by reason of the prohibition against asking for revaluation.

29. Far from advancing public interest and fair-play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. 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 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 the 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.

In *Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission and Others*, , the Supreme Court held that;

In the absence of any provision for re-evaluation of answer books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks.

In *Board of Secondary Education v. Pravas Ranjan Panda and Another* (2004) 13 SCC 383, it is held as under:

The High Court though observed that the writ petitioner who has taken the examination, is hardly a competent person to assess his own merit and on that basis claim for re-evaluation of papers, but issued the aforesaid direction in order to eliminate the possibility of injustice on account of marginal variation in marks. It is an admitted position that the regulations of the Board of Secondary Education, Orissa do not make any provision for re-evaluation of answer-books of the students. The question whether in absence of any provision to that effect an examinee is entitled to ask for re-evaluation of his answer-books has been examined by us in *Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission and Others*, , decided on 6-8-2004. It has been held therein that in absence of rules providing for re-evaluation of answer-books, no such direction can be issued. It has been further held that in absence of clear rules on the subject, a direction for re-evaluation of the answer-books, may throw many problems and in the larger public interest such a direction must be avoided. We are, therefore, of the opinion that the impugned order of the High Court directing for re-evaluation of the answer-books of all the examinees securing 90% or above marks is clearly unsustainable in law and must be set aside.

10. Keeping in view the law declared by the Apex Court in the decisions referred to supra, it is necessary to examine the fact situation in the present case. The competitive examination for recruitment of Civil Judges is governed by the Karnataka Judicial Service (Recruitment) (Amendment) Rules, 2011. A perusal of these Rules do not provide for revaluation of the answer scripts. As a matter of right the petitioners are not entitled to seek revaluation of their answer scripts. In the writ petitions the petitioners have not alleged any mala fides, illegality or irregularity in the matter of valuation of the answer scripts. Therefore, I am of the considered opinion that petitioners are not entitled for Prayer (iii).

On Prayer (iv)

11. It is not in dispute that competitive examination for recruitment of Civil Judges is governed by the Rules. A perusal of these Rules do not specify for providing question papers in Kannada. The notification dated 6-8-2011 issued by the respondents inviting applications from eligible candidates for recruitment to the vacant posts of Civil Judges specifies that such of those candidates who desire to answer in Kannada may do so in the preliminary examination and main examination. In the instant case, the aggrieved petitioners have answered the questions in the main examination in Kannada. Aggrieved petitioners have passed in certain subjects and failed in certain subjects. Further in the main examination there is one translation paper and the candidates will be required to

translate from English to Kannada and Kannada to English. Accordingly the aggrieved petitioners have answered the translation paper. Therefore, the aggrieved petitioners are not put to any inconvenience or loss for not providing the question papers in Kannada. It is not shown to me as to how the aggrieved petitioners are put to inconvenience and loss for not giving the question papers in Kannada.

12. It is contended that in all the previous examinations conducted by the respondents they have provided question papers both in English and Kannada. Even in the preliminary examination in respect of the present recruitment, question papers in English and Kannada was provided. But the respondents have not provided the question papers in Kannada in the main examination. There is a practice for a long length of time providing question papers both in English and Kannada. Thus the petitioners legitimately expected that they will be provided with the question papers in Kannada even in the main examination. As already pointed out the aggrieved petitioners have understood the question in English and have answered in Kannada. In some of the papers answered in Kannada aggrieved petitioners have passed and in some of the papers they are failed. Now that the main examination is completed, valuation of answer scripts is completed and the viva voce of successful candidates in the main examination is over and at this length of time, I am of the considered opinion that on this ground the entire process of examination cannot be annulled. The Doctrine of legitimate expectancy shall yield to equity and public interest. Though the Rules do not provide for furnishing Kannada question papers, there was a practice providing Kannada question papers. In future examinations, the respondents shall provide question papers both in Kannada and English.

On Prayer (v)

Petitioners in W.P. No. 18124 of 2013 alone urged that the framing of questions in the main examination Law Paper II to an extent of 25 marks under the head "frame proper and necessary issues with the following pleadings" as not proper. The grievance of the petitioner is that in the plaint, the provisions of law is not mentioned. In the plaint it is specifically stated at the top as "plaint". Even in the absence of mentioning specific provision, it is specified that it is a plaint. Therefore, the non-mentioning of provision of law in the plaint has not resulted in any injustice to the petitioner. Secondly, it is contended that in the cause title to the plaint and the written statement pin code numbers are not mentioned. Again this is an untenable ground. Thirdly it is contended that in some places it is mentioned as defendant and in some other places it is mentioned as defendants. These minor mistakes has not resulted in injustice to the petitioners. It is not the case of petitioners they are totally misled by these minor mistakes and for this reason they scored less marks or that they failed.

For the reasons stated above and with the above observation the writ petitions are hereby dismissed.