
(1995) 09 CAL CK 0044
In the Calcutta High Court
Case No : C.O. No. 109 (W) of 1993

Dipta Kumar Sinha Chowdhury	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 11-09-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1996) 2 CALLT 377 : 100 CWN 113

Hon'ble Judges : Nisith Kumar Batabyal, J

Bench : Single Bench

Advocate : Dilip Kr. Sinha Chowdhury, for the Appellant; P.K. Chatterjee and Gita Gupta for Respondent Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Nisith Kumar Batabyal, J.—The writ petitioner was a minor and a student of the Higher Secondary level of School education when the writ petition was filed. He has attained majority during the pendency of the writ application. He passed the Madhyamik Examination/Pariksha held under the W.B.S.E.B. in 1990 appearing from Amar Krishna Pathshala, Bhatpara, North 24 pgs., and was placed in the 1st Divn. A xerox copy of the Marksheet has been annexed with the writ petition and marked as letter-"A". He appeared in the Science stream with English, Bengali, Physics, Chemistry, Mathematics and Biology in the H.S. Examination held in April, 1992 from Bhatpara Higher Secondary School in due time. After the publication of the results, the petitioner came to know upon receipt of the Marksheet that he was given less than pass-marks in Mathematics and physics, though the marks given in other subjects were not upto his expectations. A copy of the Mark-sheet of Higher Secondary Examination has been annexed with the writ-petition and marked as letter-"B". On 22.8.92, he applied for post-publication scrutiny in all the six subjects in both papers on account of his dissatisfaction with the marks given in all the subjects. Upto the date of the filing of the writ-petition, the results of the post-publication scrutiny were not

communicated to the petitioner; so he gave a reminder to that effect. A copy of the reminder is annexed with the writ-petition and marked as letter-"C". The petitioner grew impatient upon the passing of the last date for admission to B.A. class under Calcutta University on 30.11.92 and he became suspicious that the answer scripts were not properly examined and also not available. It has been submitted by the petitioner that he has nothing to complain against the President, V.V.B. Council of Higher Secondary Examination, Bikash Bhavan, Salt Lake, Calcutta, (respondent No. 3) except that the petitioner is very much anxious to know if his answer scripts were properly examined and if those answer scripts are still available. He prays for production of those answer scripts before the Court for judicial inspection as there is no other way to enable him to look into the answer scripts. Being aggrieved by and dissatisfied with the conduct of the respondents so far as the result of the petitioner in the Higher Secondary Examination held in April, 1992, is concerned, the petitioner has come to this Court praying the following reliefs:-

"(a) a writ in the nature of mandamus directing the respondents to show-cause as to why the mark-sheet issued by the respondent No. 3 shall not be taken as improper and shall not be replaced after proper appraisal of the performance of the petitioner in the subjects mentioned above by a new Mark-sheet;

(b) a writ in the nature of certiorari commanding the respondents No. 3 & 4 to produce the twelve answer scripts of these subject for ends of justice on the date to be fixed by the Court: and for other reliefs".

2. In the affidavit-in-opposition filed on behalf of the respondents Nos. 3 and 4, the material allegations-made in the writ petition except those that are matters of records have been denied. It has been stated in paragraph-5 that the application made by the petitioner for post-publication scrutiny was duly and promptly considered and such scrutiny was made and the result thereof was communicated to the petitioner's Institution in the month of January, 1993. It has also been denied that the petitioner's answer scripts were misplaced and were not available. It has been further denied that the petitioner was entitled to look into the answers scripts. It has also denied that the petitioner has any right to make a prayer for production of answer scripts in Court or to have the same re-examined by an independent examiner. According to the respondents, the writ-petition is malafide and is liable to be rejected. It further appear from the order dated 19.8.94 that on the prayer of Mr. Chatterjee, learned advocate appearing on behalf of the respondents Nos. 3 & 4, the application for vacating the order dated 6.8.93 was prayed to be treated as affidavit-in-opposition filed on behalf of the respondents Nos. 3 & 4 and that prayer has been allowed at the time of hearing and the same has been treated as part of affidavit-in-opposition.

3. In a supplementary affidavit filed on 15th September, 1994, the writ petitioner has stated that his date of birth is the 25th day of May, 1975.

4. In the affidavit-in-reply to the affidavit-in-opposition filed by the respondents,

the writ-petitioner has stated that the issue of producing the answer scripts on Physics and Mathematics as contained in the order dated 6.8.93 passed by the Hon"ble Mr. Justice A. Kabir can hardly be opposed and in fact, has not been opposed by any cogent reason in the affidavit-in-opposition except that the petitioner is not entitled to pray for production of the answers scripts. The writ petitioner has denied the averments made in paragraphs 3, 4, 5, 6 and 7 of the affidavit-inopposition as false and misrepresenting. It also appears from the order dated 19.8.94 that the learned advocate for the writ petitioner submitted that his client's A.O against the application for vacating the interim order dated 6.8.93 be treated as affidavit-in-reply and that prayer has been allowed at the time of the hearing and the same has been treated as part of affidavit-in-reply.

5. Though the learned advocate for the writ petitioner has referred to the order d/ iled 6.8.93 regarding the production of the answers scripts of Physics and Mathematics papers of the H.S. Examination held in 1992, it appears that no finality attaches to that order. An application for vacating the said order was filed on 24.8.93 and in that application it was categorically stated In paragraph 8 that the learned Judge passing the order on 6.8.93 was not informed that the same prayer of the writ petitioner was refused earlier twice by another Hon"ble Judge of this Court and no appeal was taken against the order of refusal. However, an affidavitin-opposition against the application for vacating the order dated 6.8.93 was filed and the said application for vacating the interim order was not disposed of. In view of that fact that the learned advocate for the respondents made a prayer for treating the said application as affidavitInopposition and the learned advocate for the writ petitioner made a prayer for treating the affidavit-in-opposition thereto as affidavit-in-reply, therefore, the said matters have been taken up as prayed for by the learned advocates of both sides at the time of final hearing.

6. So far as the prayer of the writ petitioner for communication of the results of the post-publication scrutiny is concerned, it appears that the results were communicated, to the petitioner's institution in the month of January, 1993. Therefore, the matter ends here.

7. The next point which has been argued with emphasis by the learned advocate for the writ petitioner is that a writ in the nature of certiorari should be issued calling upon the respondent Council of Higher Education to produce as many as 12 answers scripts of the petitioner in the H.S. Examination held in April, 1992 before this Court, so that justice can be done to the writ petitioner in view of the incompatibility between the marks obtained in each subject and his performance therein. The learned advocate for the writ petitioner has in this connection, referred to Section 30(b) of the C.P. Code. The learned advocate for the writ petitioner has in this connection also referred to a decision of this Court reported in *Tripura Shankar Chell v. University of Calcutta* 1991(2) CLJ 279 which was affirmed by the Supreme Court. In that case, a student appeared In Final LL. B. Examination from Surendra Nath Law College, Calcutta in 1987. But he got total

marks of 268 just two short for the required aggregate of 270 that was needed for him to pass LL.B. Examination. The appeal to the University for enhancement of marks on scrutiny drew a blank as the authorities reported in on re-examination, no change in the result was found. The student filed a writ petition against the University. After some vicissitude, Mr. S.K. Mukherjee, a retired Judge of Calcutta High Court was appointed as an expert to make scrutiny on examination of the answers scripts reported that no marks had been allotted two questions answered in full. The said expert allotted due marks which when added exceeded the qualifying aggregate required to pass the Final LL. B. Examination.

8. Held, the petitioner has suffered mental anxiety depression and insult of being an unworthy student since the declaration of results of the Final LL.B Examination of 1987 in 1989. Had he been declared successful, he would have added to his credit about two and a half years of legal practice either in a Subordinate Court or in the High Court. The experience of this Court is that there was a time when a junior Advocate had to struggle here for years together to earn a livelihood but now the time has changed and two and a half years more or less are sufficient for an advocate to have a modest earning in the High Court, especially in the writ Jurisdiction. Further, it is also a fact that he could have taken part in the W.B. Civil Service (Judicial) Examination for selection as a Munsif and could have succeeded, had the result been announced in time correctly. Apart from the above, there was a good chance for him in the other competitive examinations or to get employment in any other organization which would have made his career a prosperous one. He has been deprived of the aforesaid chances by the sheer negligence and deliberate insincerity on the part of the authorities of the Calcutta University and this act of the University Is not condonable. A sum of Rs. 25,000/- as damages was awarded to be paid to the examinee by the University.

9. Mr. P.K. Chatterjee, learned advocate appearing on behalf of the respondent W.B. Council of Higher Secondary Education has submitted that there is no dispute that the Court has enough power for directing production of the documents which, in this case, are the answers scripts for the scrutiny by the Court. But, according to Mr. Chatlerjee the question is whether this Court should give such a direction in the facts and circumstances, of this case. In this connection, Mr. Chatlerjee, has at first referred to the decision of the apex Court of our land in Arun D. Desai v. High Court of Bombay, etc. 1984 SCC (supple.) 372 where the petitioner appeared for the 2nd & 3rd year Law Examinations of the Bombay University in June & July, 1980. Since the University did not declare the results of the examination in time, the petitioner filed a writ petition under Article-32 of the Constitution. The petitioner by amending the petition concentrated on the main relief regarding the declaration of the results of the examination for which he appeared. During the pendency of the writ petition, the University declared the results of both the Examinations in which the petitioner was declared to have failed in the 2nd LL. B. Examination. As a corollary, his results for the 3rd LL. B. Examination was kept in abeyance. The petitioner then

filed a writ petition in the Court of the learned Judicial Commissioner, Panaji, Goa to challenge the result of the examination. But that petition was dismissed. Thereafter, he filed a writ petition in the Supreme Court challenging the result of the 2nd LL.B. Examination on the ground that it was defective, arbitrary and partial. That petition was allowed to be withdrawn with liberty to the petitioner to file a SLP against the order passed by the Court of the Judicial Commissioner.

10. Held, there is no substance whatsoever in the writ petition. The petitioner has failed in the 2nd LL.B. Examination. It is not shown how the assessment of his answers book is defective, arbitrary or partial. Students who fail in their examinations are generally prone to make such allegations to explain their failure and to console themselves with the thought that not they but examiners are to blame. We understand the anguish of the petitioner at his failure but we have no power to pass him.

11. Mr. Chatterjee has next referred to the principles laid down in *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, . In that case, the point which was canvassed before the court was whether, under law, a candidate has a right to demand inspection, verification and revaluation of answer books and whether the statutory Regulations framed by the Maharashtra State Board of Secondary and Higher Secondary Education governing the subject in so far as they categorically state that there will be no such right can be said to be ultra vires, unreasonable and void. Held, the process of evaluation of answer papers or subsequent verification of marks under Clause (3) of Regulation 104 of the Maharashtra Secondary and Higher Secondary Education Boards Regulation does not attract the principles of natural justice since no decision making process which brings about adverse, evil consequences to the examinee is involved. The principle of natural Justice cannot be extended beyond reasonable and rational limits and cannot be carried out to such absurd lengths as to make it necessary that candidates who have taken public examination should be allowed to participate in the process of evaluation of their performance or to verify the correctness of the evaluation made by the examiners, by themselves, conducting an inspection of answer book and demanding whether there has been a proper and fair evaluation of the answers by the examiners.

12. Further, It is in the public interest that the results of public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and revaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process.

13. Mr. Chatterjee has also referred to the principles laid down in *State Medical Faculty of West Bengal Vs. Kshiti Bhushan Dutt and Others*, , in support of his contention that the decision of a Board particularly of a professional body can only be interfered with by the Court of law on three main principles, i.e.

(1) that such domestic authorities have acted under bias or in bad faith and mala fide,

(2) that such domestic authorities have violated the principles of natural justice in the proceedings and conclusions before it and,

(3) that such domestic authorities have exceeded their jurisdiction under the statutes, Rules and Regulations, regulating their duties. But the Court has to see whether any of these three principles have been infringed. If not, then the law is that it is not for the Court to substitute its own opinion of the merits of the decision of the domestic authorities.

14. Mr. Chatterjee has also referred to with Division Bench decision of this Court in *University of Calcutta v. Anindya Kumar Das* 1992(2) CLJ 339. In that case, a Division Bench of this Court has held that examination results cannot be reviewed by a Court of law in its writ jurisdiction merely for examining and rectifying alleged errors in the questions-model-answers or even the grant of marks to candidates on the basis of these model answers. There is no warrant for the view that in matters of writ relating to Universities or other examining body that the Court will have to assume in every case, the role of an appellate Court or the Court of reviewer on facts.

15. Mr. Chatterjee, learned advocate has further submitted that no principle of law was laid down in *Trilpura Shankar Chell*'s case referred to above by the learned advocate for the writ petitioner. The decision in that case was binding upon the parties but it has got no precedent value as no question of law was laid down therein.

16. From the submissions made by the learned advocates on both the sides, it appears that the apex Court of our land has laid down the general principle that the process of evaluation of answer scripts or of subsequent verification of marks does not attract the principles of natural justice. It is also in the public interest that the result of public examinations when published should have some finality attached them. If verification in the presence of the candidates or revaluation are to be allowed as of right, it may lead to gross uncertainty besides leading to utter confusion on account of the enormity of the labour and time involved in the process. The apex Court has certainly emphasized that the candidates cannot demand verification and revaluation of the answer scripts as a matter of right. In the case of *Arun D. Desai* (supra), it has been laid down that the petitioner must show how the assessment of his answer books is defective, arbitrary or partial. Mere allegations that his results are not in conformity with his performance in the examination is not enough as students who fail in the examinations are generally prone to make such allegations. Here in our case, there is no allegations that the examiners had any bias against the writ petitioner. The writ petitioner has not been able to show how the assessment of his answer books was defective, arbitrary or partial. In the case of *Anindya Kr. Das* (supra) It has been laid down by this Court that the Court cannot enter into a revaluation of the questions and

answers and act as a head-examiner of examinations held by the competent authority. In that case, it was held that there is no warrant for the view in matters of writs relating to Universities or other examining bodies, the Courts will have to assume the role of a reviewer on facts. In *Trlpura Shankar Chell's* case (supra) no principle of law was laid down. In the case of *Maharashtra State Board of S & H.S. Education v. Paiitosh* (supra), their Lordships held that inspection or verification and revaluation of answer scripts cannot be allowed as of right. Therefore, a student cannot claim a relief in a writ Court for revaluation of answer scripts or verification of answer scripts unless there are special circumstances. And special circumstances must be, as laid down in *Arun D. Desai's* case (supra), when it is shown how the assessment is defective, arbitrary or partial. Unless that initial onus is discharged, the student cannot get any relief in a writ petition against a professional body or a Board of Examiners holding public examinations considering the fact that such a course will not be in the public interest as it may lead to gross uncertainty besides leading to utter confusion on account of the enormity of the labour and time Involved in the process.

In the circumstances, this court does not find any reason to entertain the prayer by the writ petitioner. The application filed by the writ petitioner for production of the answer scripts as also the writ petition is, accordingly, dismissed.

No order is made as to costs in the facts and circumstances of the case.