

(2005) 03 DEL CK 0172
In the Delhi High Court
Case No : WPC 963 of 2005

Gunjan Verma

APPELLANT

Vs

Vice Chancellor and Others

RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Citation : (2005) 03 DEL CK 0172

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Alok Sinha and Shayur M. Shah, for the Appellant; Anurag Mathur, to 3, A.P.S. Ahluwalia and K.J.S. Kaha, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—This writ petition has been filed by a student of the Delhi University impugning the manner in which the revaluation was effected by the respondents of her answer scripts in the B.Sc. Second Year Examination. The petitioner has made the following prayers in the present writ petition :-

"a) issue a writ of mandamus or any other writ, order or direction in the nature thereof for disclosing the marks of petitioner and to verify whether the marks have been correctly recorded against the roll number of the petitioner.

b) in the alternative, to issue an appropriate writ, order or direction for appointment of an independent person or committee to verify whether the marks have correctly been given and recorded against the roll number of the petitioner, within a given time frame;

c) issue an appropriate writ, order or direction including writ in the nature of mandamus for calling of the records from the Respondents ; and

d) issue an appropriate writ, order or direction including writ in the nature of Mandamus directing the Respondents to allow the petitioner to attend the classes for B.Sc. (Hons)-III and to provisionally appear in the annual examination

conducted by the university, pending the disposal of the writ."

2. The petitioner has sought the aforesaid reliefs on the plea that after a meritorious record in her school and having passed her All India Secondary Examination from the St. Xaviers School in Delhi with 82.5% marks, she was granted admission in the B.Sc (Hon.) Electronics Course being conducted by the Khalsa College which is affiliated and recognised by the Delhi University. It is claimed that the petitioner maintained a brilliant track record and scored 63.50% marks in the first year examination. According to the petitioner she was regular even in her academic year and had taken B.Sc. (Hon.) Part II examination after full preparation giving satisfactory answers to all questions in all the papers of the subject course. However to her shock, when the result was declared on the 15th July, 2004, the petitioner was informed that she had failed in five subjects of the second year and had obtained barely passing marks in the remaining subjects.

3. As the petitioner apprehended some error in the result which was declared in respect of her examination, the petitioner submitted an application dated 15th July, 2004 with a recommendation of the respondent no 5, Principal of the Khalsa College seeking rechecking of her result in the prescribed proforma. The petitioner was not satisfied with the rechecking. Consequently she made representations dated 21st September, 2004/19th November, 2004 and 22nd November, 2004 stating that the petitioner believe that her answer scripts might have been exchanged with somebody else or that her marks were wrongly transferred to somebody else due to some technical glitch.

4. Based on information given by the officials of the Delhi University, the petitioner claims that she also applied for revaluation of all her answer scripts from papers bearing code no. 2.1 to 2.7. The result of the revaluation were declared in November, 2004 when the petitioner was informed that the position remained the same so far as her result was concerned. Under these circumstances, the petitioner is stated to have requested the Controller of Examination, respondent no. 2 to give her an opportunity to look at her examination scripts and the marks obtained vide her letter dated 22nd November, 2004 In view of the apprehensions expressed, the respondent no. 2 had permit the petitioner to see her own answer sheets. According to the petitioner, the marks given to her answers were concealed by brown stickers. On her request to permit her to see her marks, she was informed that the same could not be done as these stickers had been fixed in order to maintain secrecy for the purposes of revaluation.

The petitioner submits that as per the results declared upon revaluation she was declared as having failed in six subjects of the B.Sc. Electronics Course Part II Examination. It has been submitted on her behalf that she had a brilliant academic record and that there could not be such a drastic or remarkable change in her academic performance unless there was discrepancy in the revaluation process. The petitioner has claimed to have made a representation to the

respondents on 11th December, 2004 and sent a legal notice to the authority requesting disclosure of the marks scored by her but the same has been of no avail.

5. The respondents on the other hand have contended that the University cannot be asked to grant any relief which is not permissible under the Delhi University Act, Statutes, Ordinances and the Examination Rules. There is no rule requiring the Delhi University to permit a candidate to verify the marks awarded to the candidate and no writ in this behalf can be granted. According to the respondents, in order to reassure the petitioner in view of her expressed apprehensions that she was even permitted to see the mark sheets. The respondents have submitted that in order to allay her apprehension that there was a mix up with regard to the roll number and that the marks awarded to her, actually related to her answer sheets and her roll number, the respondent even showed the petitioner the answer sheets written by her. She had confirmed the same in writing.

6. The respondents state that the rules provide only for rechecking and revaluation of answer sheets. There is no rule or procedure permitting a candidate to assess his/her own answer sheets or to have her answer sheets made available to judge as to whether the student has been awarded the appropriate marks. In support of the contention that the petitioner cannot be granted a relief which is not permitted by the rules reliance has been placed on the judgment of the Apex Court reported at *Karuppaswamy and Others Vs. C. Ramamurthy, and Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*,

The respondents have also cited the judgment of the Supreme Court reported at (2003) 2 SC 724 entitled *K.M. Chinnappa v. Union of India and Ors.* in support of their contention.

Placing reliance on the notes given in the form for rechecking and the form for evaluation, it has been asserted that the petitioner was fully aware of the scope of both rechecking and the revaluation, and that the petitioner had no right to claim the relief which has been sought in the instant writ petition.

7. The original record relating to the petitioner has been placed before me. The respondents have placed also the marks obtained by the petitioner on the revaluation. I have given my careful consideration to the material placed before me and the rival contentions. It is well settled law that a party can be granted only such relief as is permitted by statute or by delegated legislation there under. So far as academic institutions and courses are concerned, it is well settled that a student only has such rights and can only be granted such relief as are permitted under the rules governing the issues.

8. There is no dispute that the petitioner took the B.Sc. (Hon.) Part II Examination conducted by the Delhi University. So far as the rechecking is concerned, the rules for the same have been set out on the Application Form

itself. It would be useful to notice the rule 2 which has been printed on the application form which reads as hereunder :-

"2. Rechecking in Practical Examination is not undertaken. But in the courses/ subjects where rechecking is permissible the Answer books are checked just to ensure that all the questions attempted by the candidate have been valued, that the marks awarded have been totalled correctly and that the total marks have been correctly carried over to the result statement."

The respondents have stated on affidavit that the rechecking was done as per this rule and that the respondents ensured that all of the question attempted by the petitioner had been evaluated and that the marks were totalled correctly and further that the totalled marks were correctly carried over to the result statement.

9. Admittedly, the petitioner made requests for revaluation on the 21st September, 2004 after her papers had been rechecked. However, no copy of the application made by her has been placed on record. The respondents have placed a sample of an application for revaluation of results. As per this application, the petitioner made the following declaration on the application form:-

"DECLARATION

I have carefully read rules regarding revaluation printed overleaf and I agree to be governed by the same. I am fully aware that as a result of seeking revaluation the original marks secured by me can also be reduced. I undertake to surrender my original result and to accept the final result when declared by the University as a result of revaluation applied for by me, as per rules laid down in this behalf."

10. The petitioner thereupon surrendered her original results and had undertaken that she would be bound by the final result declared by the Delhi University as a result of the revaluation as per the rules in this behalf. The petitioner was aware that as a result of the revaluation the original marks scored by her could also be reduced.

11. It is noteworthy that the rules for revaluation were also mentioned on the form itself. The relevant rules in this behalf may be noted which reads as under :-

"1. When you apply for revaluation, you surrender your original performance and will now accept the revised performance in which :-

- (a) there can be NO CHANGE,
- (b) there can be INCREASE in the marks,
- (c) there can be Decrease in the marks.

2. The application is to be made by the candidate in his/her own hand-writing and under his/her own signature and not by anyone else on his/her behalf.

4. (a) If the award of the Revelator varies from the Original award up to and

including + 5%, of the maximum marks, the original award will stand.

(b) If the award of the first revelator is beyond + 5% and up to + 10%, the average of the marks of the original examiner and the first revelator will be taken.

(c) If the award of the Revelator varies from the original award by more than + 10% of the maximum marks, the answer scripts will be examined by a Second Revelator and the average of the two nearest awards out of the three awards thus available (including the original award) shall be taken as final."

It is evident that the scheme of revaluation has been appointed so as to get the fairest assessment for a student. The respondents have ensured that in case of an unreasonable variation, the answer scripts would undergo a second revaluation to rule out any possibility of arbitrariness.

12. Perusal of the record produced before me shows that in one of the papers bearing code 2.6, there was variation beyond the 10% fixed by the Delhi University and even the second revaluation was undertaken of the answer scripts of the petitioner to ensure that complete justice was done to her.

13. It is also evident that despite their being no rule permitting a candidate to see her answer scripts in view of the apprehension stated by the petitioner that the result declared in respect of her candidature was not relating to her answer scripts, the respondents had gone beyond the call of duty and had permitted her to scrutinise her answer sheets. The answer sheets in terms of her request made in her letter dated 22nd November, 2004 After scrutinising the answer sheets, the petitioner had made the following endorsement on the same :-

"All answer sheets seen, checked, verified and found to be mine."

14. It is noteworthy that the petitioner apparently was satisfied and thereafter did not convey or make any objection. She is stated to have made a representation only on the 11th December, 2004 but the respondents had done everything that was possible and permissible. This writ petition has thereafter been filed on the 19th January, 2005 seeking the prayers set out hereinabove.

15. I find that the petitioner's contentions and prayers are all made on a self assessment and self appraisal of her abilities. The same is neither objective nor can be expected to be a fair or reasonable assessment. The respondents have caused the papers of the petitioners to be originally evaluated as per the scheme of examination. It is an admitted position that the identity of the candidate is not disclosed to the original examiner as the answer sheets bear only roll numbers. Thereafter on her request for rechecking of the marks awarded, rechecking was carried out as per rules. The petitioner was not satisfied and sought revaluation which was also done. The result was declared based upon the revaluation of the petitioner's answer sheets by independent evaluators. The final result of the petitioner remained unchanged.

16. The Courts have had occasion to examine similar contentions and prayers in certain matters. It would be useful to set out herein some of the observations made by the Courts in this behalf.

"In *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, the Apex Court held as under :-

"17. In the light of what is stated above, while dealing with contention no.1, this contention also must fail. The petitioners subjectively feel that as they had fared better in the written test and had got more marks therein as compared to concerned selected respondents, they should have been given more marks also at the oral interview. But that is in the realm of assessment of relative merits of concerned candidates by the expert committee before whom these candidates appeared for the viva voce test.

Merely on the basis of petitioners apprehension or suspicion that they were deliberately given less marks at the oral interview as compared to the rival candidates, it cannot be said that the process of assessment was vitiated. This contention is in the realm of mere suspicion having no factual basis. It has to be kept in view that there is no even a whisper in the petition about any personal bias of the members of the interview committee against the petitioner. They have also not alleged any mala fides on the part of the interview committee in this connection. Consequently, the attack on assessment of the merits of the petitioners cannot be countenanced. It remains in the exclusive domain of the expert committee to decide whether more marks should be assigned to the petitioners or to the concerned respondents. It cannot be the subject matter of an attack before us as we are not sitting as a court of appeal over the assessment made by the committee so far as the candidates interviewed by them are concerned. In the light of the affidavit in reply filed by Dr. Girija Dhar to which we have made reference earlier, it cannot be said that the expert committee had given a deliberate unfavorable treatment to the petitioners. Consequently, this contention also is found to be devoid of any merit and is rejected."

In *Dr. (Miss.) Suriana Subhash Rane Vs. University of Bombay and others*, (para 5) the court held as under :-

"5. . xxxxx In both theory and practicals the petitioner secured an aggregation of 3 and that sufficed to enable a pass. She had to get a similar aggregate in orals and what stumped her there was a deficit of three points which had she got would have enabled the aggregate of 3 instead of 2.2. In fact a raise of the points by a fraction of 0.3 would have entitled her to get an aggregation of 3 by the rounding-up process. Petitioner ascribes her missing the prize to the machinations of respondent 6. Like any allegations of this nature, there is no material to bear out even a little thereof. As good a refutation as any is the pointer to respondent 6 awarding a point more to petitioner than Dr. Kikani. Petitioner's contention that the orals were a repeat of the theory papers and

having successfully waded through the latter, she could not have failed in the former is an assumption no more. A conclusion based on assumptions and that too of an interested party can carry no weight. Therefore the factual mala fides aspect cannot be held in petitioner's favor."

17. Therefore, the reliance placed by the petitioner only on her past record to submit that it was impossible for her to secure the declared result cannot be accepted.

18. So far as the parameters of functioning of the educational institutions are concerned and the discretion of the court to grant relief beyond the limits circumscribed by the applicable statutes, bye-laws and rules in this behalf is concerned, the same has come up before the courts for consideration at several occasions. I may appropriately refer to the pronouncements of the Supreme Court in this behalf which are reported at C.B.S.E. and Another Vs. P. Sunil Kumar and Others, ; A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, ; State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another, ; State of Maharashtra Vs. Vikas Sahebrao Roundale and others, ;

Guru Nanak Dev University Vs. Parminder Kr. Bansal and another, ; Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others,

19. In Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Alpana V. Mehta(supra), the court 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.

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 defensive 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."

These views of the court were emphasised further in the later judgments cited hereinabove.

20. I may also notice the findings of the Apex Court in the judgment reported at 2003 12 SCC 724 entitled Sayyed Aqueel Arif v. University of Pune wherein the court had occasion to examine the provisions relating to revaluation of answer scripts here similar to the provisions in force in Delhi University. The court held as under :-

"6. As to the interpretation of the Ordinance concerned, we are of the view that the interpretation put thereupon by the High Court is correct. Clause (2) of Ordinance 134-A-B specifically provides that after the process of verification of marks is done, the marks obtained as a result of verification before the process contemplated in clause (7) of the Ordinance is initiated, the marks arrived at as a result of the process of verification under clause (2) is taken as the basis. With this as the basis, evaluation is carried out as contemplated under clause (7). Unless there is a difference of 10% or more of the total marks between the "original marks" and the marks awarded after revaluation, no effect is given to the revaluation. The words "original marks", of course, have to be read and understood as defined in clause (2) of the Ordinance, meaning thereby, the marks obtained after the verification process.

7. We are satisfied that the Ordinance was correctly applied to the case of the appellant. Since the difference between the "original marks" within the meaning of clause (2) arrived at as a result of verification, did not exceed 10% of the maximum marks, the appellant was rightly denied the benefit of the revaluation for the purpose of clause (7) of the Ordinance."

21. In view of the position under the applicable rules framed by the University of Delhi, the factual matrix as set out hereinabove and the dicta of judicial pronouncements which are binding on me, I am of the view that no further relief can be granted to the petitioner. There is no provision/permitting appointment of an independent person/committee to verify whether the marks have been correctly awarded to the answer scripts of the petitioner. The petitioner was fully

aware of the applicable rules and made the application firstly for rechecking and thereafter for revaluation of her answer scripts. The method in which revaluation is undertaken was clearly notified to the petitioner and I have no reason to disbelieve the respondents that the revaluation was effected by independent evaluators. In order to ensure anonymity and secrecy to the marks originally awarded to the petitioner, the same have been admittedly concealed by pasting paper over the same. It is the contention of the petitioner herself that the original marks were not visible when she examined the mark sheets on the 22nd November, 2004

22. The petitioner also gave a declaration that she would be bound by the marks awarded upon revaluation. The respondents have made a fair disclosure of the marks in the records placed before me. I also find that in the paper no. 2.6 in terms of Rule 4(c) aforestated the second revaluation by a second Revelator was even undertaken. The respondents having complied with every requirement of law, their action cannot be faulted for any legal reason or ground. Furthermore, the respondents themselves took a wholly sympathetic view in the facts and circumstances of this case and in the light of the representations of the petitioner and permitted her to see her answer sheets for the purpose of identification of the same. It is the contention of the petitioner herself that the same was beyond any applicable rule in this behalf.

23. In view of the foregoing discussion, I am of the considered view that the relief claimed by the petitioner is admittedly and clearly beyond legal provisions and the applicable rules and cannot be granted to her.

For all the foregoing reasons, the petitioner is not entitled to the relief sought for in the writ petition which is hereby dismissed. There shall however be no order as to costs of the present proceedings.