

(1997) 09 KAR CK 0048

In the Karnataka High Court

Case No : Writ Petition No's. 20330, 20852 and 21137 of 1997

Kumari Renuka

APPELLANT

Vs

The Karnataka Pre-Universkty Board, Bangalore and Another

RESPONDENT

Date of Decision : 18-09-1997

Acts Referred:

Karnataka Pre-University Course State Level Examination Rules, 1997 — Rule 2, 29, 29 (4), 7 28

Citation : AIR 1998 Kar 135 : (1997) ILR (Kar) 3179

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Advocate : Sri Vigneshwar S. Shastry, Sri K. Gopala Hegde and M/s. L.G. Havanur and Company, for the Appellant; Sri N.B. Vishwanath, High Court Government Pleader, for the Respondent

Judgement

1. The petitioners in W.P. Nos. 20330 and 20852 of 1997 and the daughter of petitioner in W.P. No. 21137 of 1997 appeared for the Pre-University examinations conducted by the Department of Pre-University Education ("Department" for short) in April, 1997. They have also been issued marks card in regard to their performance in the said examination. The daughter of petitioner in W.P. No. 21137 of 1997 has passed the said examination. The petitioners in W.P. Nos. 20330 and 20852 of 1997 have failed in some subjects. They applied for revaluation of some papers.

2. Wherever the revaluation marks was found to be within a range of plus or minus five, the department has not effected any change in the original marks; but where the change was more than plus or minus five, that is plus or minus six or more, the department has called upon the candidates to surrender the marks cards for correction/reissue of marks cards by incorporating the marks obtained on revaluation.

3. In the case of candidates concerned in these petitions, there was a downward revision by six or more marks on revaluation. Therefore, the department has

called upon them to surrender the marks cards, for incorporation of the lesser marks obtained on revaluation. As a result the petitioner's daughter (in W.P. No. 21137 of 1997) will become ineligible for admission to professional courses under the Karnataka Selection of Candidates for Admission to Engineering, Medical and Dental Course Rules, 1997. The petitioners in other two writ petitions will fail in some subjects, where they had earlier passed. Feeling aggrieved, the petitioners have filed these petitions and sought quashing of endorsements dated 14-7-1997 issued by the department (respectively Annexures-H, F and A in the three petitions) calling upon the candidates to surrender the marks cards issued to them and receive the revised marks card. They have also sought striking down the last sentence of sub-rule (4) of Rule 29 of the Karnataka Pre-University Course State Level Examination Rules, 1997 (hereinafter referred to as the rules) which reads "Only when there is an upward or downward revision by six or more marks, in revaluation, a fresh marks card shall be issued". They have also sought a direction to the department to retain the original marks where the marks on revaluation were found to be lesser than the marks originally obtained.

4. The department has, contended that a student is not entitled to revaluation as a matter of right and the revaluation is permissible only in accordance with the rules; that it is for the State to decide the manner in which revaluation should be permitted; that Rule 29(4) contemplates substitution of the original marks by revaluation marks where there is an upward or downward revision by six or more marks; and that the petitioners having applied for revaluation, are bound by the results of the revaluation and cannot contend that the marks could be altered only when there is upward revision and not when there is a downward revision. The department, therefore contends that as the marks obtained by the candidates in the revaluation is less than the original marks, and the difference is six or more, the department is entitled to call upon the petitioners to surrender the original marks cards for incorporation of the revaluation marks. Reliance is placed by the department on the decision of the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, and the decision of the Bombay High Court in Lalit Taori Vs. Nagpur University, Nagpur and Others, .

5. Rule 26 deals with marks lists and valued answer scripts. Rule 27 deals with declaration of results. Rule 28 deals with the retotaling of marks. Rule 29 deals with the revaluation of answer papers.

5.1 Rule 26 requires that as soon as may be after the close of evaluation of answer scripts each day, marks list shall be prepared by each Examiner and he shall hand over the same along with the valued answer scripts, to the Chief Examiner, who shall arrange for their review and scrutiny. It further provides that marks list prepared shall, after review and scrutiny, be sent to the Competent Authority at the end of each day of evaluation work.

5.2 Rule 27 requires the results of every examination conducted by the Department of Pre-University Education shall be declared and published in such

manner and on such dates and time and at such places and through such manner and media as may be specified.

5.3 Sub-rule (1) of Rule 29 requires that the State Government shall specify by notification, the subjects in which answer scripts may be revalued. It further requires that the department shall arrange, soon after the declaration of the results, for the revaluation of the answer scripts of the students who are not satisfied with the valuation of the answer papers already done. Sub-rule (2) provides that the department shall by notification announce the date, time and place for submitting the applications for revaluation of answer scripts and also the date of declaration of the results of revaluation; and that the applications submitted by the candidates for revaluation, shall be referred to a Special Committee of three examiners appointed by the department for the purpose of revaluation. Sub-rule (3) requires the department to specify the fee to be paid along with the application for revaluation. Sub-rule (4) of Rule 29, which is challenged in these petitions, reads as under:

"(4) If there is an upward revision of six or more marks after the revaluation in any of the subjects, then the fee paid for revaluation shall be refunded to the student. If the marks awarded already remains the same or gets reduced or increased upto five marks, then the amount of fee paid for revaluation shall stand forfeited. Only when there is an upward or downward revision by six or more marks in revaluation, a fresh marks card shall be issued".

Sub-rule (5) provides that revaluation results shall be final and there shall be no appeal or review against the revaluation.

6. The petitioners contend that the revaluation is sought only by those students who feel that they obtained less marks than they actually deserved and who feel that there has been some error in the valuation leading to lesser marks being awarded. It is pointed out that no student who feels that he has obtained more than he deserved, will apply for revaluation. It is therefore contended that whenever there is revaluation, only if there is an upward revision in the marks obtained, the original marks should be replaced by revaluation marks; and if on revaluation, a student is found to have obtained lesser marks, the same should be ignored and the original marks should be continued without any alteration. It is contended that the very purpose of seeking revaluation will be defeated, if on revaluation, the marks obtained are reduced, as it will lead to disastrous results as far as the student is concerned.

6.1 There is no legal basis for such a contention. The Supreme Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education, *supra*, has pointed out that a student has no right other than what is provided under the rules. The Supreme Court also held that the revaluation is a matter of policy of the State and the Examining Authority. It was further held that the Courts should not examine the merits or demerits of the policy that is contained in a rule, as the policy is not open for scrutiny, and what is open for scrutiny is

the question whether the rule falls within the scope of the rule making power conferred by the statute. Therefore, the question of students relying on any general principles relating to revaluation, does not arise. The rules will regulate whether there should be revaluation, and if so, in what circumstances revaluation should be permitted and how revaluation should be given effect, so as to achieve the objects of revaluation. Therefore, the contention of the petitioners that the marks of revaluation can be substituted only when there is an upward revision and not otherwise, irrespective of the provisions relating to revaluation, is hereby rejected.

6.2 In Lalit Taori's case, *supra*, the Bombay High Court, having regard to the wording of the relevant Ordinance, held as follows:

"Revaluation is a part of examination and is a fresh appraisal of the performance of a student by other examiner... In case the marks increase, as a result of revaluation, the increase is binding on the University which is obliged to vary the result on that basis. How, then the decrease in the marks can be held not binding on the student? The result of revaluation -- whatever it is -- has to be accepted as correct and final by all concerned and for all purposes. Indeed after revaluation, the result of original valuation is erased. To hold otherwise would be against the basic concept of revaluation. It is submitted that the ordinance is a beneficial piece of legislation intended for the benefit of student community and must be interpreted in its favour as far as possible. Apart from the consideration that such interpretation would be basically wrong, neither the letter nor the spirit of this ordinance leaves any scope for such interpretation....".

Though the above passage gives an impression that what is stated is a general principle regarding revaluation, it is not so. What is stated is the purport of the relevant ordinance and nothing more. The purpose and right to revaluation as also the manner and effect of revaluation, are entirely governed by the relevant rule or ordinance and not by any general principle.

6.3 Once a student, seeks revaluation in accordance with the rules, revaluation will be made in accordance with the rules and the student cannot contend that the revaluation marks should be entered only if there is any upward revision and not when there is any downward revision in the marks. If the rules provide that the student will be entitled to the benefits of revaluation in a particular manner, then, he will be entitled to the benefits in that manner and not any other manner. If the rules provide that the marks on revaluation shall replace the original marks, then it follows that the marks obtained on revaluation shall replace the original marks. If the rules provide that the revaluation marks shall replace the original marks only when the difference exceeds five, then the original marks can be replaced by the revaluation marks, only if there is such difference. In other words, the matter is governed by the rules and not by any general principle of equity.

7. The petitioners next contended that when there is a revaluation of answer

scripts, two evaluations of the answer script are available, that is, the original valuation and the revaluation. The petitioners contend that it is for the student to choose whichever mark is more advantageous to him. This contention is also liable to be rejected for the reasons stated while dealing with the first contention. To reiterate, revaluation is a matter governed by the rules and a student is entitled to choose between the marks, only if the rules provide for such choice. The question of giving any choice to the students de hors the rules, will not arise.

8. The question that then remains for consideration is what is the true effect of Rule 29(4) of the rules? This sub-rule consists of three parts. The first two parts deal with the fees paid by the student for revaluation. The first part deals with the refund of revaluation fee paid, if there is an upward revision of six or more marks. It is not relevant. The second part provides that if the marks awarded remains the same, or gets reduced or increases upto five marks, the revaluation fee paid shall stand forfeited. This again is not relevant for the purpose of these petitions.

8.1 The third part of sub-rule (4) provides that only when there is an upward or downward revision of six or more marks in revaluation, a fresh marks card shall be issued. The rule does not speak of original marks being cancelled or erased or substituted. The provision that a fresh marks card should be issued only if the variation in marks is six or more, and the provision that revaluation fee paid shall stand forfeited where the difference is upto five marks (plus or minus), makes it clear that revaluation marks should be ignored and the original marks obtained in the first valuation shall stand unaltered, even if there is change in the marks on revaluation, if the difference is only upto 5 marks. Thus when there is an application for revaluation or when there is a revaluation of the answer script, there is no automatic erasure or cancellation of the original marks. The rule contemplates the original marks being altered only in certain circumstances, that is where the difference in marks is six or more.

8.2 If the change is more than five marks, that is six or more, either plus or minus, the rule states that a fresh marks card shall be issued. But, it does not state what should be the marks that should be incorporated in the fresh marks card. The department wants to read the rule by adding the words "by incorporating the marks obtained in the revaluation" at the end of the rule the last sentence of 29(4), so that Rule 29(4) will read thus:

"Only when there is an upward or downward revision by six or more marks in revaluation, fresh marks card shall be issued, by incorporating the marks obtained in revaluation".

The department contends that adding such words is necessary to ensure that the rule does not become meaningless. The department relies on the principles of interpretation that:

"Where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which

deprives certain existing words of all meaning, it is permissible to supply the words"

Denning, L.J. observed thus in *Seaford Court Estates Ltd. v Asher*, cited with approval by the Supreme Court in *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, :

"When a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give "force and life" to the intention of the Legislature a Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases".

8.3 The petitioners, on the other hand, contended that unless the rule itself specifies what should happen when the change is more than five, no additional words can be read into the rule. They contend, relying on the decision of the Supreme Court in *Nalinakhya Bysack Vs. Shyam Sunder Halder and Others*, , that Courts should not add to or amend the rules nor by construction supply words to make up deficiencies which are found in the rules and it is for the rule-making authority to correct the defect.

9. Revaluation is a matter governed purely by the provisions of the relevant rules. Revaluation has to be made in accordance with the rules and in no other manner. A student has no right to revaluation, outside the provisions of the relevant rules. If the examining body does not provide for revaluation in its rules, a student is not entitled to revaluation. If the rules provide for revaluation in any particular manner, revaluation and the effect thereof can be only in that manner and no other manner. Examining bodies have adopted different modes of altering the marks, while giving effect to revaluation, some of which are given below:

(a) If the difference in the marks on revaluation is more than a prescribed limit, the answer script is sent to a third evaluator for a second revaluation and that valuation is made final; or the average of the three valuations is awarded as the revaluation marks;

(b) Where on revaluation, there is a change in marks, the average of the original marks and the revaluation marks is considered to be the marks obtained by the student;

(c) Where the rules provide for revaluation, and a third valuation in the event of difference between the first valuation and the revaluation, the average of two nearest valuations, is taken to be the marks obtained by the student in place of the original marks;

(d) Where on revaluation, there is a change in marks, the revaluation marks is substituted in place of original marks;

(e) Where the difference in marks on revaluation does not exceed a prescribed limit, the original marks are retained and revaluation marks are ignored.

Where the rules do not provide what should be the marks that should be awarded as a result of revaluation, or as in this case, where the rule provides that when the difference in marks is more than plus or minus six, a fresh marks card should be issued, but fails to provide as to what should be the marks that should be substituted in place of the original marks, can the examining authority contend that it will adopt a particular method of substitution of marks, where several alternatives exist? It is no doubt true that where addition of a particular word or words is necessary to give meaning to a provision and to prevent the provision from being rendered a nullity, such a word or words can be supplied. But that principle will apply only when there can be no doubt about the word or words to be supplied and there are no alternative words that could be added. The principle will not apply, where to give meaning, certain words have to be added, but several alternative sets of words could be added leading to different results. Where the rule is silent, to permit the examining authority to add a particular set of words, from among several choices available, would, to borrow the analogy used by Denning L.J., amount to altering the material itself rather than ironing out the creases.

10. Thus where the rule provides that there shall be a change in the result in a given set of circumstances, but fails to stipulate what the change should be, and several alternatives can equally apply, it is not possible to choose a particular alternative and add a particular set of words to provide for a particular change. The petitioners have produced the regulations relating to revaluation in force in several Universities to demonstrate that where there is difference in marks on revaluation, several methods are adopted to determine the marks that are to be awarded on revaluation.

11. Let me give an illustration. Ordinance 14 of the Karnataka University (as amended by Notification dated 20-12-1993) provided as follows:

"In case, the difference between the original award and challenge valuation are more than 20% of the maximum marks of the paper/subject, then the paper be sent to another examiner for valuation and code numbers be put on such papers".

The said ordinance did not state what should happen when the answer script is sent to a third examiner for valuation. On noticing the lacuna, the same has been rectified by an amendment to the ordinance by adding the following words at the end:

"... and candidate be awarded average of the best of two marks awarded".

Without such amendment, the University could not obviously choose and apply an alternative which is most disadvantageous to the student.

12. In the absence of an express provision as to what should happen when a certain state of things exist, it is not permissible to adopt one among several

solutions, which is detrimental to the interests of the students, when other beneficial alternatives exist. As already held, the principle relied on by the department, that it is permissible to supply words which appear to have been accidentally omitted, will apply only where the word or words to be added are the only word or words that can be added and there is an obvious omission thereof. That principle will not apply where different sets of words with different meanings can be added. To illustrate: If a section provides that a particular act is an offence and the offender shall be punished, but fails to prescribe the quantum or type of punishment, obviously it cannot be contended that the offender should be imposed the maximum punishment of life imprisonment.

13. In view of above, it is not possible to accept the contention of the department that the words "by incorporating the marks obtained in revaluation" should be added to the end of the sub-rule (4) of Rule 29. Consequently, the contention of the department that revaluation marks shall be substituted for the original marks, is rejected.

14. In the absence of a logical meaning to the last portion of Rule 29(4), it is more appropriate to construe it in a manner, which is beneficial to the student. As pointed out above, a student applies for revaluation only when he is not satisfied with the result and feels that he got lesser than what his performance deserved. If a student feels that he has obtained more marks than expected, he will not apply for revaluation. In fact, sub-rule (1) of Rule 29 provides for revaluation of answer scripts of the "students who are not satisfied with the valuation already done". Hence, the provision for revaluation, is a beneficial provision intended for the benefit of the student community and should therefore be interpreted in favour of the students, if there is ambiguity. Of course, where the provision is clear, the question of interpretation in a manner beneficial to the student, contrary to the specific provision, will not arise.

15. Rule 29(4) merely says that if the variation is six or more, a fresh marks card should be issued. But what should be the marks to be shown in the fresh marks card is not stated. In such circumstances the benefit of interpretation should be given to the student and it should be interpreted as giving the revaluation marks, where there is an upward increase of six or more marks and retention of the original marks if there is a downward revision. Of course, the State Government can set right the defect in Rule 29(4) by incorporating suitable words to give effect to what it intended to happen if there is a variation of more than five. But, until that is done, the department cannot require a student to surrender the marks card for substituting revaluation marks for the original marks, where there is any reduction in marks on revaluation.

16. The petitions are accordingly allowed and the endorsements issued by the department calling upon the petitioners to surrender the marks card for substitution of marks obtained on revaluation where the marks obtained by them are less than the original marks (by six marks or more), are quashed and the department is directed to retain the original marks of the petitioners in case of

downward revision of marks on revaluation.