

(2005) 02 AHC CK 0204
In the Allahabad High Court
Case No : Special Appeal No. 64 of 2005

Kumud Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-02-2005

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2005) 5 AWC 4282 : (2005) 1 ESC 661

Hon'ble Judges : Dilip Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Shiv Kant Pandey, for the Appellant; S.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This special appeal has been filed against the judgment and order of the learned Single Judge dated 20.12.2004 by which the writ petition of the appellant/petitioner has been dismissed for issuing direction to the respondents to recheck the answer book of the appellant/petitioner in presence of her representative and declare the final result accordingly.

2. The facts and circumstances giving rise to this appeal are that the appellant/petitioner appeared in the final examinations held in March 2004 by the Central Board of Secondary Education, hereinafter called "the Board". The result was declared in June 2004, wherein the appellant/petitioner could not pass the paper of Mathematics I and she could appear in the supplementary examination. The said supplementary examination was conducted on 30.7.2004, however she could not clear the said paper, when the result was declared on 20.8.2004.

3. Being aggrieved, appellant/ petitioner filed an application for rechecking of her Mathematics 1 paper depositing the requisite fee as required under the examination by-laws applicable in the case. However, vide communication dated 8.9.2004, the Board informed the appellant/ petitioner that on verification, marks in the subject of mathematics I were found to be correct. Being aggrieved,

appellant/petitioner filed the Writ Petition No. 54275/2004 for issuing direction to recheck her answer book in presence of her representatives, which has been dismissed vide impugned judgment and order dated 20.12.2004, in view of the fact that there was no provision for re-evaluation of the answer book, therefore, the question of rechecking/re-evaluation in presence of the candidate or her representative could not arise. Hence this appeal.

4. Learned counsel for the appellant Shri Shiv Kant Pandey has submitted that there has been total fraud on the part of the respondents as they collected the fee of Rs. 100/- for rechecking, but they had done only the verification of the marks. Article 21 of the Constitution of India declares that getting education is a fundamental right of every citizen of this country and this view has been affirmed by the Hon''ble Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . The appellant is entitled to get the re-evaluation of her answer book in Mathematics I in her own presence or in the presence of her representative. She had been a extraordinary student and she had won the prize in the past, therefore, the appeal deserves to be allowed.

5. On the other hand Shri S.P. Sharma, learned counsel appearing for the respondents has vehemently opposed the appeal contending that there is no provision in the examination bye-laws or re-evaluation of the answer book and in absence thereof, the Court cannot issue a direction for re-evaluation of her answer book and under no circumstances in her presence, and it is for the Board to take a policy decision. Even if the validity of the bye-laws is challenged, it is not permissible for the Court to examine the issue being a matter of policy decision and the appeal is liable to be dismissed.

6. We have considered the rival submissions made by learned counsel for the parties and perused the record including the record of the writ petition.

7. We do not find any material on record to show that the appellant has been a student of extraordinary calibre. The award won by her is in playing Chess and not in the academic field as it appears from the record of the writ petition.

8. The appellant had deposited a fee of Rs. 100/- on 27.4.2004, for which the receipt has been issued, a copy of which has been filed in the writ petition. From the said receipt, it appears that they have received the fee for R/C, which may mean rechecking. The appellant for reasons best known to her did not consider it proper to file the application submitted by her, either before the writ Court or in appeal. Merely because the fee has been received for R/C, the appellant cannot be entitled for re-evaluation or rechecking in the absence of any statutory provision.

9. It is settled legal proposition that a document is to be read in the context of the subject matter and in consonance with statutory provision as held by the Hon''ble Supreme Court in Union Territory, Chandigarh Admn. and others Vs. Managing Society, Goswami, GDSDC, , wherein it was observed as under :

"A contract in violation of the mandatory provisions of law and only can only be read and enforced in terms of the law and in no other way. The question of equitable estoppel does not arise because there can be no estoppel against statute."

10. In view of the above, it is not permissible for the appellant/ petitioner to make a mountain out of mole hill and advance the arguments which are belied by the facts of the case.

11. The learned Single Judge has categorically held that in absence of any statutory provision of re-evaluation, the Court cannot issue a direction for re-evaluation and that too in her presence. The Court has no competence to issue a direction contrary to law. [Vide Union of India and Another Vs. Kirloskar Pneumatic Company Limited, ; State of U. P. and others Vs. Harish Chandra and others, ; and Vice Chancellor University of Allahabad and Ors. v. Dr. Anand Prakash Mishra and Ors. (1997) 10 SCC 2641.

12. In State of Punjab and others Vs. Renuka Singla and others, , dealing with a similar situation, the Hon"ble Apex Court observed as under :

"We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations."

13. Similarly, in Karnataka State Road Transport Corporation v. Ashrafulla Khan and Ors. JT 2002 (1) SC 113, the Hon"ble Apex Court has held as under :

"The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injected by law."

14. The issue of re-evaluation does not arise in the facts and circumstances of the case, in view of the fact that there is no provision in the examination bye-laws framed by the respondents. It provides only for verification of marks obtained by a candidate in a particular subject. The relevant part thereof reads as under :

"(i) A candidate who has appeared at an examination conducted by the Board may apply to the concerned Regional Officer of the Board for verification of marks in any particular subject. The verification will be restricted to checking whether all the answer"s have been evaluated and that there has been no mistake in the totalling of marks for each question in that subject and that the marks have been transferred correctly on the title page of the answer book and to the award list and whether the supplementary answer book(s) attached with the answer book mentioned by the candidate are in tact. No re-evaluation of the answer book or supplementary answer book(s) shall be done.

(iv) No candidate shall claim, or be entitled to, revaluation of his/her answers or disclosure or inspection of the answer book(s) or other documents.

(vi) In no case the verification of marks shall be done in the presence of the candidate or any one else on his/her behalf, nor will the answer books be shown to him/her or his/her representative.

(vii) Verification of marks obtained by a candidate will be done by the officials appointed by or with the approval of the Chairman.

(xii) The decision of the Chairman on the result of the verification of marks shall be final."

15. In the instant case all kind of scandalous and wild allegations have been made under the garb of fundamental right of education to every citizen of this country, but no allegations of malafide have been made against any officer of the Board. In the absence thereof, it is difficult to assume that the verification has not been made correctly. It is not even the allegation of the petitioner that verification has not been done correctly.

16. The issue of re-evaluation of answer book is no more res integra. This issue was considered at length by the Hon"ble Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , wherein the Hon"ble Supreme Court rejected the contention that in absence of provision for re-evaluation, a direction to this effect can be issued by the Court. The Hon"ble Supreme Court further held that even the policy decision incorporated in the Rules/Regulations providing for rechecking/verification/ re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Hon"ble Supreme Court held as under :

"In our opinion, this approach made by the High Court was not correct or proper because the question whether a particular piece of delegated legislation--whether a rule or regulation or other type of statutory instrument--is in excess of the power of subordinate legislation conferred on the delegate as to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc. and also the object and purpose of the Act, as can be gathered from the various provisions of the enactment. It would be wholly wrong for the Court to substitute its own opinion for that of the legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act, and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in view of the Court, the impugned provisions will not help to serve the object and purpose of the Act, So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the Statute, the Court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the legislature and its delegate to determine, as a matter

of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the Statute.

In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any draw-backs in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act, and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution."

17. This view has been referred to approved, relied upon and reiterated by the Hon'ble Supreme Court in *Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna and Ors.* JT 2004 SC 380, observing as under :

"Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and nothing them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. 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."

18. In view of the above, the case stands squarely covered by the aforesaid judgment of the Hon'ble Supreme Court and we do not see any ground to interfere in the matter.

19. Undoubtedly, conduct and holding of examinations in a most appropriate and fair manner is imperative and it is solemn duty of the examining body to provide for fair procedure, rules, regulations, or bye-laws for the same as career of

students depends upon the result of the examinations.

20. A Constitution Bench of the Supreme Court in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, , has held that where the decision under challenge has been taken by the Committee of Expert, "normally the Courts should be slow to interfere with the opinion expressed by the experts" unless there are allegations of mala fide against any of the Members of the Expert Committee. The Court further observed as under :

".....It would normally be wise and safe for the Courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than Courts....."

21. Similar view has been taken by the Apex Court in *State of Bihar and Others Vs. Dr. Asis Kumar Mukherjee and Others*, ; *Dr. M.C. Gupta and Others Vs. Dr. Arun Kumar Gupta and Others*, ; *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, ; *Dr. Uma Kant Vs. Dr. Bhika Lal Jain and others*, ; *The Chancellor and Another Vs. Dr Bijayananda Kar and Others*, ; *State of Orissa v. Prajnaparamita Samanta*, (1996) 7 SCC 106 *President, Board of Secondary Education v. D.Suvankar* 2006 JT 10; *Chairman, J and K State Board of Education Vs. Feyaz Ahmed Malik and Others*, ; and *The Dental Council of India Vs. Subharti K.K.B. Charitable Trust and Another*, .

22. Thus, it is settled law that when a decision is taken by the Committee of Expert having high academic qualifications and long experience in the specialised field, the Courts should not normally probe the matters unless there are compelling circumstances for doing so, i.e. allegations of mala fides against the members of the Expert Committee, rejection of application on extraneous consideration etc.

23. The submission advanced on behalf of the appellant/petitioner that in view of the decision of the Supreme Court in the case of *Unni Krishnan (supra)*, the right of education under Article 21 of the Constitution includes the right for re-evaluation of the answer books has merely to be stated to be rejected. It is open to the statutory authority to frame the Bye-laws/Rules/Regulations which do not have the provisions of re-evaluation and it is not for the Courts to legislate or issue direction to legislate in a particular manner providing for re-evaluation. Right to education of a child merely puts a pious obligation on the State to provide opportunity of receiving education within its available resources.

24. We also do not agree with the submissions advanced by the learned counsel for the appellant as made in paragraph 7 of the written submissions that by not quashing the impugned order the petitioner/ appellant would be deprived of further education in class XI, and thus, would violate her most valuable human right and the constitutional right. If such a submission is accepted, it would lead to the inevitable conclusion that there should be no examination at any level, and right to education would amount to getting the Certificate, Diploma/Degree without appearing at the examinations and the Boards/Universities would not be

competent to declare a student as Tail".

25. The contention further urged that the examination bye-laws are not a valid piece of legislation, as required under Article 21 of the Constitution, is totally misconceived and not worth even dealing with by us. The validity of the said document is not under challenge. Moreso, it is nothing but an embodiment of the policy decision taken by the Board, and it is not required to be interfered with.

26. Similarly, the submission made by the learned counsel that the writ petition could not have been dismissed without calling for the counter affidavit from the respondents, is totally preposterous and without any substance, as In the instant case, the factual controversy was not involved at all. Verification of the marks has been done as per the said bye-laws. In absence of the provisions for re-evaluation, asking the respondents to file a reply would have been a futile exercise.

The appeal is totally misconceived. Not even a single ground taken herein by the appellant is tenable in law.

Special appeal lacks merit and is accordingly dismissed.