
(1990) 09 KAR CK 0003
In the Karnataka High Court
Case No : W.A. No. 113 of 1990

Miss Gayathri

APPELLANT

Vs

Bangalore University

RESPONDENT

Date of Decision : 06-09-1990

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1990) ILR (Kar) 3682

Hon'ble Judges : Mohan, C.J.; Ramakrishna, J

Bench : Division Bench

Advocate : B.K. Chandrasekhar, of ACC Associates, for the Appellant; N.K. Patil, for R-1, V.K.K. Nair, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Mohan, C.J.—The second respondent (herein) preferred a Writ Petition in W.P. No. 1755/1989 seeking a Writ of Certiorari quashing the Notification dated 9-8-1985 issued by the Bangalore University, partially in so far as it prohibited revising the ranking in respect of those candidates who secured enhanced marks on revaluation except declaration of class.

2. The facts are as under: The second respondent herein was a student of Seshadripuram College, Bangalore. He appeared for the final B.Com., degree examination of Bangalore University under Registration No. 8627371 in the month of April 1988. He passed in his first attempt. In the said examination, the second respondent was declared to have been passed in II Class having secured total marks of 355 out of 600. Apprehending that his answer book has not been properly valued, the second respondent made a representation to the respondent-1, praying for revaluation of the same. On revaluation, the Clause relating to revaluation is as under:

"No revised rank will be declared in respect of those who get benefit in the revaluation (review) and no incidental benefit which accrue due to the

reevaluation (Review) will be granted, except declaration of class.

XXX XXX XXX By invoking this Clause Revaluation Form which contains several important instructions is prescribed and Instruction No. 4 is material for our purpose which is extracted hereinbelow:

"No revised rank or other incidental benefits will be given as a result of valuation (review) except declaration of Class."

On revaluation of the answer scripts 355 marks became 384 out of 600. Thereafter, from second class he was awarded first class having secured necessary aggregate for first class.

3. On 1-9-1988 the University of Bangalore notified the names of the candidates who have secured first ten positions of rank in final B.Com., examination taking into consideration the aggregate of marks secured in all the three years i.e., First, Second and Third year B.Com., examination. According to the second respondent, the appellant secured 831 marks in the aggregate whereas he had secured 834 after revaluation. Therefore, he is entitled to be placed in the 10th rank, in the place of the appellant.

4. Concerning this, on 3-9-1988, the second respondent submitted a representation to the first respondent with a request to award him the rank to which he became entitled to consequent to securing 834 marks on revaluation. The representation of the second respondent evoked no response at the hands of the University. The second respondent was told by the officials of respondent-1, that in accordance with para-7 of the impugned Notification, no revised rank shall be declared in respect of those who get benefit in the revaluation and no incidental benefit which accrues due to the revaluation will be granted except declaration of class. It was under these circumstances, Writ Petition came to be preferred. The matter came up before our learned brother Justice H.G. Balakrishna, The learned Judge was of the view that the declaration of ten ranks in the B.Com., degree examination is a declaration of academic distinction of far reaching benefits to the recipients in recognition of the meritorious and outstanding performance in degree. The artificial barrier created between valuation and revaluation does not stand the test of either fairness or reasonableness. If actual performance is the criteria, the petitioner should be entitled to award of tenth rank no matter whether the marks secured by him were higher in revaluation when compared with the marks awarded to him under wrong valuation earlier. There is no intelligible differentia for the discrimination between the petitioner (before him) and second respondent (before him) to exclude the petitioner for the benefit of ranking based on marks obtained in revaluation. In this view he held that there is violation of Article 14 of the Constitution in so far as the second respondent (before us) has not been treated equally and fairly. Accordingly, he allowed the Writ Petition. Thus, the second respondent, in the Writ Petition Anjay Bansal Vs. Bangalore University and another, in so far as there is alteration of ranking, has preferred this Writ Appeal.

5. It is submitted on behalf of the appellant that the revaluation occurred on the basis of Clause 7 which clearly stated that no revised ranking shall be given consequent to revaluation. It must be stated that in matters of examination, there is no question of fundamental right. Further, the learned Judge, erred in putting all the examinees under one class and making out a case for discrimination. On the contrary those who took examinations and were awarded as per original valuation form one class as against those who seek revaluation. Equality means Law should be administered equal among equals. Whereas a person who seeks revaluation cannot compare himself favourably with those whose valuation was done originally and were awarded ranking. If this position is made clear, there is no possibility of invoking Article 14 of the Constitution, nor again is there any unfairness or arbitrariness. Further, when the second respondent herein sought revaluation, he was clearly informed under Instruction No. 4 that he will not be awarded revised ranking and what he will be awarded is only declaration of class. Having taken the revaluation subject to that conditions, it is not open to him to approbate and reprobate.

6. The University also takes similar stand and cites in support of its contention the decision in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, and particularly our attention is drawn to para-27 of the Judgment. On this basis it is contended that it is purely a matter of policy to award re-ranking or not where the University has decided against re-ranking. As a matter of fact, it is not open to this Court to interfere in such matters of policy as re-ranking will lead to good deal of confusion as pointed out by the Supreme Court in that case.

7. As against this, the learned Counsel for the second respondent stated that nobody can claim as of right the revaluation. However, where revaluation is permitted, the full benefits of the revaluation must be accorded. There is no justification for not awarding respective ranking and confining it only to mere declaration of class. There is no rationale or nexus established with the rule and the policy here. Under similar circumstances in Manoj Kumar Jindal Vs. Ravishankar University, Raipur and Others, as seen from Head-note A, it is stated that revaluation takes us to original examination and revaluation is nothing more than an integral part of the scheme of the examination and therefore there is no justification of denying the benefit of ranking. After all, the original valuation and the revaluation pertain to the same examination. Therefore, all these examinees must be treated on a par. If an examinee is treated with hostile discrimination, as rightly held by learned Judge it is neither fair nor just. Even on principles of ethics or equity to deny such ranking is unfair. To the same effect is a decision reported in the case of Bhagat Ram Sharma Vs. The Himachal Pradesh University and Others, It is held that where by an ordinance the benefit of revaluation was sought to be taken away that was held to be bad and that ordinance was held not applicable because the revaluation was a part of the original valuation. The same principle must govern and it was this which prevailed with the learned Judge. Learned Counsel for the second respondent commends its acceptance.

8. One thing must be settled clearly. Examinations are purely governed by the University Act and Regulations made thereunder. No person can claim any fundamental right with regard to the conduct of examinations. Equally, no examinee can claim a fundamental right with regard to re-examination or revaluation or even re-totalling. These are purely matters pertaining to the policy of each University. Therefore, University in its wisdom as a matter of policy adopts a particular course. This Court herd is not exercising supervision over this academic institution to find out whether such policy is good or bad. Once these basic principles are set down, there will be no difficulty. That is why we set down the principles.

9. With this we go on to Clause 7 of the Notification dated August 9, 1985 which reads as follows:

"No revised rank will be declared in respect of those who get benefit in the revaluation (review) and no incidental benefit which accrue due to the revaluation (review) will be granted, except declaration of class."

How far this policy of not awarding re-ranking could be held to be proper. We need pause to consider this aspect because in para-27 of the Judgment reported in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, it was stated thus:

"Further, it is in the public interest that the result 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."

Considering this, earlier Supreme Court had made the observation in para-16 which reads thus:

"...But any drawbacks 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."

10. Though we tried to ponder over as to what exactly is the reason for not giving the benefit of re-ranking on revaluation, it is stated on behalf of the University as a matter of policy such re-ranking leads to confusion. Therefore, it is not open to us to say such a policy is bad. Then again the second-respondent asked for revaluation in which application form he was clearly instructed as under:

"No revised rank or other incidental benefits will be given as a result of revaluation (review) except declaration of Class."

Where, therefore, he took the revaluation with the full knowledge of the fact that

he will not be given ranking, it is not open for him to wriggle out of this and contend that he was entitled for re-ranking. Our answer should be in the negative. No person can approbate and reprobate. There was Clause 7 concerning the ranking and there was also instruction in the Revaluation Application Form and yet the second respondent ventured the same. Now it is contended that it is not possible for any person to waive his fundamental right. There is, fallacy in this argument because as we pointed out earlier, there is no fundamental right. It is purely a creation of statute and regulation of the University. The only question is therefore whether there is any unfairness or arbitrariness enabling the second respondent to invoke Article 14 of the Constitution of India which view prevailed with the learned Judge. We find that the matter is not probed in its proper perspective. AH examinees cannot be put into one compartment or crucible and apply the test of equality enshrined under Article 14 of the Constitution. We are clearly of the view that those examinees who were valued originally and given ranking belong to a particular class as against those who seek revaluation. It is no use to contend that all of them having taken the same examination and result will take back to original examination. That is general principle. But the question is whether there is a reasonable distinction or not. In our view Yes, because those examinees who have been given ranking on the original valuation have already been given the ranking and thereafter be it a mistake or be it a case of negligence, any re-ranking comes to be done, then the original ranking has to be disturbed as is pointed out in the decision in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, and it will lead to lot of confusion. Therefore, once ranking has been given, there must be some finality. That finality having been reached the same cannot be disturbed once over again by reasons of revaluation. Therefore the second respondent cannot compare himself with those who got the ranking in the original valuation and plead a case of discrimination. As is rightly contended by the appellant and the University, equality means among the equals and not unequals. It is from this point of view we are unable to see how Article 14 of the Constitution could arise in this case. To the general principles laid down in Manoj Kumar Jindal Vs. Ravishankar University, Raipur and Others, , that revaluation is an integral part of the main examination there is no demur. But what is relied on is Head-note "A" which we extract:

"(A) M.P. Vishwavidyalaya Adhiniyam (2 of 1973) Section 23(xliv) - Ravishankar University Ordinance 5, Clauses 22, 31 and Ordinance 6, Clause 25-Merit list Publication of - Increase of marks of one examinee on revaluation consequent change in Merit List Obligatory on University to notify fresh Merit List."

This ratio would have been applicable to the second respondent had there not been Instruction-4 on which condition he Look the revaluation. Therefore, that ratio cannot be applied.

11. Bhagat Ram Sharma Vs. The Himachal Pradesh University and Others, was a

case in which it was sought to be contended on behalf of the University by reason of interim ordinance the benefit of revaluation result, the petitioner to get gold medal would be deprived. The said contention was not accepted. That is not the nature with the facts on hand. Accordingly, with great respect we are unable to agree with the learned Judge and we hold that the policy, in relation to Clause 7 which is Instruction No. 4 in the Revaluation Form, is beyond scrutiny by this Court. Accordingly, we set aside the order of the learned Judge and dismiss the Writ Petition. Writ Appeal will stand allowed. No costs.

An oral application for leave to appeal to Supreme Court is made. We find that this is not a fit case. We decline to grant leave.