
(1995) 07 CAL CK 0034
In the Calcutta High Court
Case No : C. O. 4657 (W) of 1995

Miss Srumoyu Ghosh

APPELLANT

Vs

The State of W. B. and others

RESPONDENT

Date of Decision : 13-07-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Evidence Act, 1872 — Section 114

West Bengal Council of Higher Secondary Education Act, 1975 — Section 40

Citation : AIR 1996 Cal 1

Hon'ble Judges : Ashok Kumar Chakravarty, J

Bench : Single Bench

Advocate : Mrs. Bharati Chatterjee, Mr. Sandipan Banerjee and Mr. Md. Idrish, for the Appellant; Mr. P.K. Chatterjee and Mrs. Gita Gupta, for the Respondent

Judgement

1. The petitioner's case is that in 1992 she appeared in the secondary examination held by the West Bengal Board of Secondary Education and secured 75.66% marks with better marks in three subjects. In the Higher Secondary Examination, however, she having obtained only second division marks having secured only 548 marks she applied for Post Publication Scrutiny of her answer script on all the subjects, namely, English, Physics, Chemistry and Mathematics and submitted the requisite fees. In the Gazette of Post Publication Scrutiny it was declared that the marks obtained by her was correct. It was alleged by the petitioner that there was no proper examination of her answer scripts and a few days before the result was published the answer scripts were found to be moving from door, to door to the teachers for the examination of those papers. The petitioner accordingly prayed for review or re-examination of her answer scripts in respect of English, Chemistry, Physics and Mathematics.

2. In the affidavit-in-opposition filed by respondents Nos. 4 and 5 it was alleged that it does not necessarily follow that any one would obtain good marks in all successive examinations consistently and that on the proper examination of the answer scripts of the petitioner she was found to have obtained 548 marks and

was properly placed in the second division. It was further alleged that under the existing rule of the West Bengal Higher Secondary Education Act, there is no scope for review of any answer papers and what is permitted under the rules is only scrutiny of the same and the petitioner having applied for the same her papers were duly scrutinised and she was found to have obtained the marks which she initially obtained. It was further denied that any answer script of any candidate was taken from door to door for examination by the teachers Alipurduar.

3. The petitioner in her affidavit-in-reply have reiterated the statement made in her writ application and alleged that under the laws she has right to get her papers re-examined or reviewed.

4. Heard Mrs. Bharati Chatterjee, learned advocate appearing on behalf of the petitioner and Mr. P. K. Chatterjee, learned advocate appearing for the respondents.

5. The main contention of Mrs. Chatterjee, appearing on behalf of the petitioner is that simply because the petitioner obtained very good marks in her secondary examination that itself is a ground for presuming that she will be entitled to get very good marks in the subsequent examination, specially Higher Secondary Examination. I am not in a position to agree with the submission made by the learned advocate for the petitioner in this matter because it does not necessarily follow that simply because any student obtained good marks in any earlier examination that would automatically render him liable to get the same result in the subsequent examinations. No tangible material was produced before this Court on behalf of the petitioner to show, as a matter of fact, that there is any other reason for consideration that the petitioner had not been allowed to have the marks which she had scored legitimately. My attention was drawn to the single Bench decision of this Court in Kumari Piyali Das v. State of West Bengal, reported in 1995 WBLR Cal 26, where it was held that there being no reasonable basis for classification for making any distinction between successful and unsuccessful candidates any rule restricting the scope of review or re-examination of successful candidates which is available to unsuccessful candidates is violative to the constitutional provision as envisaged under Art. 14 of the Constitution. Accordingly, a successful candidate is entitled to get his paper examined as unsuccessful candidate. The decision has no bearing to the facts and circumstances of the instant case inasmuch as that was a decision in respect of rule framed under the West Bengal Board of Secondary Education Act, 1973 where there is a provision for review of examination of unsuccessful candidates. In the instant case the rule framed by the West Bengal Council of Higher Secondary Education Act, 1975 (sic) and the rules framed under this Act there is no provision of re-examination or review of any paper of any candidate. The rule provides post publication scrutiny of papers on payment of prescribed fees and it is clear from the said rule that it was not for re-examination, that is, a fresh valuation of the answers. There being thus no statutory provision for

review or re-examination of any answer paper, the writ petition is liable to be rejected on this ground alone.

6. Mr. P. K. Chatterjee, learned advocate for the respondents drew my attention to the decision of *Arun D. Desai v. High Court of Bombay* through Chief Justice, reported in *Arun D. Desai Vs. High Court of Bombay and Others*, where it was held that students who fail in their examinations are generally prone to make allegations that the assessment of their answer scripts is defective, arbitrary or partial to explain their failure and to console themselves with the thought that, not they but the examiners are to be blamed for that. There being no positive materials before this Court that the examiners were actuated by any malice or negligence or any other consideration for which the petitioner was given lesser marks than which he actually deserved. It appears that there is hardly any basis for the allegation made by the petitioner that her papers were not properly examined or that those need review or re-examination merely because she obtained higher marks in her examination by different board.

7. Mr. P. K. Chatterjee further submitted that in view of the large number of candidates who are appearing in the examination if re-examination and review is allowed as a matter of principle then it will be impossible for the Board to conduct further examination and it shall be bagged down only to settle the dispute of the unsuccessful candidates that their answer scripts were not properly examined. Mr. Chatterjee further submitted that in so far as evaluation of the answer scripts are concerned the writ court shall be very reluctant to pass any order in respect of such matter. Reference was made to the case of *Bhushan Uttam Khare Vs. The Dean, B.J. Medical College and others*, , where it was held that in deciding the matters relating to orders passed by authorities of educational institutions, the Court should normally be very slow to pass orders in its jurisdiction because matters falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice. Here in the instant case the interest of justice does not demand in the absence of any material whatsoever, that interference of the court is called for in the matter. My attention was also drawn to a Division Bench decision of this court reported in 1992 (2) Cal LJ 339, *University of Calcutta v. Dr. Ahindya Kumar Das*, where it was 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 those model answers. There is no warrant for the view that in matters of writs relating to Universities or other examining bodies the Court will have to assume in every case the role of an Appellate Court or the role of a reviewer on facts.

8. Mr. Chatterjee also drew my attention to the decision of *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, , where it was held that a process of evaluation of answer papers or of subsequent verification of marks does not

attract the principles of natural justice since no decision making process which brings about adverse evil consequences to the examinees is involved. The principle of natural justice cannot be extended beyond reasonable "and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners.

9. It was further held in this decision that it is in the public interest that the results of public examination when published should have some finality attached to them. If inspection and 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.

10. It was further held in the instant case that the Court should be 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.

11. It was lastly submitted by Mr. Chatterjee that the writ court should not ordinarily interfere unless there is violation of statutory principles of law and that it is not for the court to substitute its own opinion on the merits for the decisions of domestic authorities. For this purpose Mr. Chatterjee has referred the case of State Medical Faculty of West Bengal Vs. Kshiti Bhusan Dutt and Others, where it was held that the court should interfere only to the limited cases that the domestic authorities have acted under bias or in bad faith and mala fide and that such authorities have acted against the principles of natural justice or that such authorities have exceeded the jurisdiction under the statute. Since no writ court should go into the disputed question of fact it was held that "for the Court to do the functions of the University by deciding disputed questions of fact of academic eligibility which the Governing Body and particularly the Special Board has to decide will not only be an unwarranted usurpation of the statutory rights of universities and academic institutions but will also be an assumption of a kind of responsibility which the Court has neither the requisite machinery nor the requisite ability to discharge".

12. So upon a careful consideration of the facts and circumstances of the case along with the position of law in this matter there cannot be any doubt that the petitioner shall not be entitled to any review or re-examination of her answer scripts as prayed for by her.

13. The writ application accordingly fails but without any order as to costs.

14. Application dismissed.