

(2010) 07 DEL CK 0052

In the Delhi High Court

Case No : Writ Petition (C) No. 4502 of 2010

Ms. Prachi Gupta

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 07 DEL CK 0052

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Francis Paul, for the Appellant; Atul Nanda, CGSC, Malika Gahlot and Gaurav Gupta for R-1, Atul Kumar, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner, claiming herself to be a brilliant student securing more than 98% marks in Mathematics since Class IV, by this writ petition impugns the result of the Class XII examination held by the respondent No. 2 CBSE, failing the petitioner in the subjects of Mathematics and Economics. The petitioner has preferred this writ petition for a direction to the respondents to show her original answer sheets of the said subjects alleging that the same appear to have been got substituted with those of some other student; the petitioner also seeks the relief of re-evaluation and re-checking by an examinee other than the one on the basis of whose checking the result has been declared.

2. The examination Bye-Laws of the respondent No. 2 CBSE and on which terms the petitioner had appeared in the examination inter alia provide as under:

61. Verification of marks obtained by a Candidate in a Subject

(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 answers 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 intact. No revaluation 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 anyone else on his/her behalf, nor will the answer books be shown to him/her or his/her representative.

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

3. The petitioner did apply to the respondent No. 2 CBSE in accordance with the aforesaid provisions. The respondent CBSE vide its communication dated 4th June, 2010 to the petitioner informed that no mistake had been detected. Being not satisfied this petition was filed.

4. The counsel for the respondent No. 2 CBSE appearing on advance notice has opposed the petition. He contends that the law is now well settled, the petitioner is not entitled to the relief claimed. In this regard, reliance is placed on:

i. Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, upholding the validity of the clause prohibiting disclosure and inspection of the answer books and as to their confidentiality and holding that it is not within the legitimate domain of the Court to determine whether the purpose of a statute can be served better by adopting any Policy different from what has been laid down by the legislature or its delegatee and to strike down as unreasonable a Bye-Law merely on the ground that the Policy enunciated therein does not meet with the approval of the Court. The argument of fair play requiring such disclosure was also rejected and it was held that 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 crosschecks at different stages and that measures for detection of malpractice, etc. have also been effectively adopted, 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. Similarly, the argument of public interest was also not accepted;

ii. Parent Forum for Meaningful Education and Others Vs. Central Board of Secondary Education and Others, where the Division Bench of this Court laid down that the setting of the question papers in the examination and the evaluation of the answers is the prerogative of the examining body and it is not

advisable for Court to interfere therein. It is informed that the Supreme Court in SLP preferred by the CBSE against the said judgment, vide order dated 5th November, 1993 set aside the direction of the Division Bench of this Court to the CBSE to introduce the system of revaluation;

iii. Parents Forum for Meaningful Education v. CBSE being C.W.P. No. 1824/1997 decided on 19th December, 2001 where again the Division Bench of this Court held that this Court would not interfere with the policy decision taken by the State, far less in relation to the Education Policy which has been evolved by experts. It was however held that the question of re-evaluation and the right of the student to have a look at the answer sheets has been settled in previous litigations listed in the said judgment. It is informed that the SLP against the said judgment of the Division Bench of this Court was also dismissed;

iv. Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission and Others, laying down that in the absence of any provisions in the rules for re-evaluation of the answer books, no candidate would have a right to seek re-evaluation of answer books;

v. Judgment dated 6th August, 2004 of the Single Judge of this Court in W.P.(C) No. 10374/2004 titled Nirbhesh Saxena v. CBSE & other writ petitions where also citing numerous errors/irregularities, reliefs as in the present petition were claimed but were declined;

vi. Order dated 18th July, 2006 in W.P.(C) No. 10984/2006 titled Akasksha Jain v. The Secretary, CBSE holding that in exercise of extraordinary power under Article 226 in certain given circumstances where ex facie fraud or large scale irregularity is made out, the Court may entertain petitions with a view to satisfy itself whether the results or the process in given cases has been done correctly but in the absence of any visible manageable standards it would be hazardous for the Court to indicate to the Board to put into place a mechanism of re-evaluation. The Court nevertheless did notice that denial of re-evaluation was harsh;

vii. The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das and Others, laying down that direction to produce answer paper for inspection by examinee should not normally be passed;

viii. Order dated 10th July, 2008 of this Court in W.P.(C) No. 4645/2008 titled Rinith Anand v. CBSE;

ix. Order dated 8th August, 2008 of this Court in LPA No. 451/2008 titled Rinith Anand v. CBSE dismissing the appeal against the order of the Single Judge (supra) declining the grant of relief of re-evaluation;

x. Order dated 1st October, 2008 of this Court in W.P.(C) No. 5575/2008 titled Nishant Deengawal v. CBSE;

xi. Order dated 25th May, 2010 of the Supreme Court in H.P. Public Service Commission v. Mukesh Thakur laying down that it is not permissible for High

Court to examine the question paper and answer sheets itself and reiterating the view in the judgments aforesaid of the Apex Court.

xii. Order dated 9th June, 2010 of this Court in W.P.(C) No. 4034/2010 titled Rao Siddhant Yadav v. CBSE;

All to the same effect.

5. Per contra, the counsel for the petitioner relies on Sahiti and Others Vs. The Chancellor, Dr. N.T.R. University of Health Sciences and Others, laying down that re-evaluation of answer scripts in the absence of specific provision is perfectly legal and permissible and if the decision of the Educational Authority is arbitrary unreasonable, mala fide, the court has the power to order re-evaluation.

6. The only ground urged by the petitioner for seeking re-evaluation is her past record and her expectation of high marks and shocked at being failed. The same in my opinion cannot form the basis for seeking the directions sought. A mere expectation of a higher better marks/result would not entitle the court to go contrary to the grain of the aforesaid judgments. The Supreme Court in Union of India (UOI) Vs. Mohan Lal Capoor and Others, held "it is not expedient to extend the horizon of natural justice in the audi alteram partem rule to the twilight zone of mere expectations, however great they might be". The petitioner has neither alleged nor shown any irregularity in the conduct of examination or any of the Rules providing various checks and crosschecks to maintain the identity of an examinee with the answer sheets. There is no basis for the averment that the answer sheets have been mixed up. If such reasons are to be accepted, there would be a spate of petitions and the Courts would be inundated with each student wanting to take a chance qua his/her result. The Supreme Court has already held that there ought to be a finality to the result and specially of such an examination in which not thousands but lakhs of students appear and which is an all India examination.

7. In so far as the judgment cited by the counsel for the petitioner is concerned, the same is in the context of the powers of the Examining Authority to re-evaluate and not on the right of the student to re-evaluation.

There is no merit in the petition, the same is dismissed in limine.

No order as to costs.