
(1990) 09 BOM CK 0032
In the Bombay High Court
Case No : Writ Petition No. 914 of 1984

Rajendrakumar Chandrakant Nadkarni	APPELLANT
Vs	
University of Bombay and another	RESPONDENT

Date of Decision : 05-09-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1991 Bom 126 : (1991) 1 BomCR 96

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : Deepak R. More, for the Appellant; P. Shankarnarayanan, for the Respondent

Judgement

S.M. Daud, J.—This petition under Art. 226 of the Constitution questions the vires of the second part of Ordinance 237-A of the Ordinances and Regulations of the University of Bombay and Ex. F issued on the basis thereof.

2. The petitioner and the second respondent were students doing the Master of Commerce course from a College affiliated to the Bombay University. For obtaining a M.Com. degree the candidate has to undergo two examinations conducted annually. Marks of both the examinations are aggregated for the purposes of ranking amongst the candidates. In the M.Com. Part I examination the petitioner had applied for a revaluation of his answer books in the subject of Cost Accounting. Initially, he was awarded 54 marks out of 100 marks, and upon a revaluation was given revised marks of 71. In the Part II examination, petitioner secured 240 marks out of 400 marks. The total for the two examinations worked out to 502 marks out of 800 marks. On 17-8-1983, under the signature of the Registrar of University, a special certificate was sent to the petitioner proclaiming that he had stood first amongst a total number of 260 candidates who had passed from amongst 645 candidates who has appeared for the examination. In the next year on 30th March 1984 the University issued the communication at Ex. F bringing to the petitioner's notice the alleged error in

proclaiming him the first amongst the successful candidates. This was on the basis of the impugned Ordinance. To appreciate the impugned provision in its proper perspective it will be necessary to reproduce the same in full :--

"The revised marks obtained by a candidate after revaluation as accepted by the University shall be taken into account for the purpose of amendment of his results in accordance with the rules of the University in that behalf, but these marks shall not be taken into account for the purpose of award of scholarships, prizes, medals and/or the order of merit."

(Underlining mine)

Admittedly, but for the application of the second part of the impugned Ordinance, the University would not be in a position to recall the special certificate awarded to the petitioner on 17-8-1983. The University takes the stand that whatever it has done is correct and that there is no substance in the challenge levelled to the vires of the impugned Ordinance.

3. Mr. More in support of the contention taken by his client relies upon Anjay Bansal v. Bangalore University and another AIR 1990 Karn 225. The provision impugned in that decision was worded thus at page 226 :--

"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."

The similarity, if not the virtual identity, between the provision figuring in that case and the impugned Ordinance before me, is striking. The learned single Judge of the Karnataka High Court held the afore-mentioned provision to be violative of the Constitutional guarantee of equality enshrined in Article 14 of the Constitution. Mr. Shankarnarayanan representing the Bombay University contends that the judgment relied upon by Mr. More proceeds on the erroneous assumption that an examinee who attains a superior rank in the course of an ordinary appraisal is equal to one who attains superiority pursuant to an applied for revaluation. Counsel submits that the, two belong to two different classes and cannot be placed on an equal footing. It is not possible to agree with this submission. Both the candidates appear for one and the same examination in one and the same degree examination. They are examined in the same subjects and they are asked to give answers to the same questions. The level of competency expected from both is identical. In fact the very provision for a revaluation is based upon the possibility of the original appraisal being erroneous. If this be the case, I do not see why the result of the revaluation should be restricted to the declaration of a class and not render the candidate eligible for the purpose of award of scholarships, prizes, medals and/or the order of merit. Mr. Shankarnarayanan says that the element of subjectivity in examinations can never be ruled out and whereas the person succeeding on revaluation has the benefit of a re-appraisal of his product, those who appear at the ordinary examination are deprived of that benefit. But the converse of this

argument is that one who should have got the benefit of that evaluation at the very first appraisal is deprived thereof, by virtue of what the University itself considers to be an error. If revaluation is permitted and if ranking in so far as class is concerned is awarded to candidates who get the benefit of a revaluation, there is no reason to restrict the result to the mere declaration of a class. The full benefit to the vindicated candidate has to be awarded and his marks have to be taken into account for the purpose of scholarships, prizes, medals and/or the order of merit. Agreeing with the learned single Judge of the Karnataka High Court I make the rule absolute by quashing Ex. F and confirming the correctness of Ex. D i.e. the special certificate awarded on 17-8-1983. Rule in these terms is made absolute with parties being left to bear their own costs.

4. Rule made absolute.