(2015) 07 DEL CK 0050

In the Delhi High Court

Case No : Writ Petition (C) 6170/2015 & CM No. 11211 of 2015

Samarth Mittal APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:
Central Sales Tax Act, 1956 — Section 13(4) (c), 8(4)
Companies Act, 2013 — Section 202
Monopolies and Restrictive Trade Practices Act, 1969 — Section 13(2)

Citation : (2015) 6 AD 498

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ayushya Kumar, J.K. Goyal and Gaurav Goyal, for the Appellant; Bharathi Raju, CGSC, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—On 30th June, 2015 when this petition came up first, the following order was passed:

"1. The petition impugns the refusal of the respondent No. 2/CBSE to re-evaluate the answer sheet of the petitioner in the subject of ''Physical Education'' in the Class XII examination.

2. The counsel for the petitioner on enquiry states that the examination in ''Physical Education'' comprises of a theory paper of 70 marks and a practical of 30 marks and clarifies that he is seeking review of the marks accorded to the petitioner in the theory paper only.

3. The attention of this court is drawn to the amendment carried out in the year 2014 and notified on 11th March, 2015 of Rule 61 of the Examination Bye-laws of the CBSE which permits such revaluation.

4. The counsel for the respondent No. 2/CBSE appearing on advance notice has at the outset relied on the order dated 26th November, 2014 of the Division

Bench of this court in LPA No. 749/2014 titled as Shri Hari Mohan Sharma Vs. The Chairman, Central Board of Secondary Education to contend that the revaluation in the subject of ''Physical Education'' contrary to the rules/ Bye-laws is not permissible. However, the counsel for the petitioner rightly contends that the said judgment does not consider the amended Rule 61.

5. The amended Rule 61 allows a candidate to apply for revaluation in the manner as prescribed by the CBSE from time to time.

6. Counsel for the respondent then states that CBSE has issued a Circular which permits revaluation in ten subjects only and of which ''Physical Education'' is not one. She, however, seeks time to place the said circular on record.

7. The question which would arise is whether the CBSE can issue a circular contrary to the Bye-laws and whether the Bye-laws enabling the CBSE to prescribe the manner in which revaluation will be applied for, would entitle the CBSE to restrict the subjects in which revaluation can be applied for.

8. List on 1st July, 2015."

2. The counsel for the respondent No. 2 Central Board of Secondary Education (CBSE) today has in Court handed over the response affidavit which is taken on record. However, on inquiry, whether any plea other than that which was raised on 30th June, 2015 has been taken in the counter affidavit, the counsel for the respondent No. 2 CBSE fairly states that the defence of the respondent No. 2 CBSE remains the same, that as per the Circular issued by the CBSE, revaluation of the answer sheet in the subject of Physical Education is not permissible. It is further argued that there was a similar circular in the year 2014 also. Yet another argument is that the amended Bye-law 61 is to be interpreted as empowering the CBSE to limit the subjects in which revaluation is permitted. Reliance in this regard is placed on Jaysukh Bavanji Shingalia Vs. State of Gujarat, AIR 2015 SC 75 : (2014) AIRSCW 5487 : (2014) 10 SCALE 166 to contend that even where the rule uses the word ''shall'' it is permissible to read the same as ''may'' and on the same parity, the words in the Bye-law "in the manner as prescribed by CBSE from time to time" have to be read as including a power to the CBSE to restrict the subjects in which re-evaluation can be permitted. It is also stated that this has been the regular/consistent practice of the CBSE.

3. On query, whether the Bye-law stands on a higher footing than the Circular, the counsel fairly states that while Bye-law is made in accordance with Clause 18 of the Government Resolution dated 10th July, 1929 constituting the CBSE, the Circular is administrative in character and does not dispute that a Bye-law would be on a higher pedestal than an administrative circular.

4. Rule 61 (iv) of the Examination Bye-laws as stood earlier and as amended with effect from 11th March, 2015 is as under:

5. The circular issued by the Controller of Examinations, with respect to re-evaluation inter alia provides as under:

"3. Revaluation

i) Only those candidates who have applied for obtaining photocopy of the evaluated answer book shall be eligible to apply for revaluation or challenge the marks awarded to any question (s) in the following subjects only.

6. It is not in dispute that the petitioner applied for obtaining photocopy of the evaluated answer book and complied with the other procedure prescribed for seeking revaluation.

7. The only question thus for determination is whether CBSE can, in exercise of administrative power, restrict the subjects in which revaluation can be sought, while prescribing the "manner" in which revaluation is to be sought.

8. The counsel for the petitioner though at the time of hearing did not cite any judgment in this respect but has thereafter, on being prompted, referred to the Blacks Law Dictionary and the Law Lexicon giving the meaning of ''Manner'' as, "a way, mode method of doing anything or mode of proceeding in any case or situation" and as "procedure to be followed". Copies of judgments, (a) of the Allahabad High Court in Rama Shankar Vs. Official Liquidator, Jwala Bank Ltd., AIR 1956 All 222 : (1956) 26 AWR 808 : (1956) CriLJ 369 laying down that the word manner in Section 202 of the Companies Act, 1913 refers to the procedure to be followed in the matter of institution and hearing of the appeal; and, (b) of the Supreme Court in Sales Tax Officer Vs. K.I. Abraham, AIR 1967 SC 1823 : (1967) 3 SCR 518 : (1967) 20 STC 367 laying down that the phrase "in the prescribed manner" in Section 8(4) read with Section 13(4) (c) of the Central Sales Tax Act, 1956 only confers power to prescribe rule stating what particulars are to be mentioned in the prescribed form, but does not authorize the rule making authority to prescribe a time limit within which declaration is to be filed by the registered dealer.

9. The judgment cited by the counsel for the respondent is found to be of no application. The principle of interpretation of statutes which permits "shall" to be read as "may" and vice versa also, in my view is not attracted to the controversy.

10. The amendment with effect from 11th March, 2015 to the Bye-law has to be seen in the light of the Bye-law as it stood earlier. Prior thereto, CBSE prohibited applying for re-evaluation. However, the same stood changed with effect from 11th March, 2015 and re-evaluation has been permitted in Class XII examination. In my view, the words "....may also apply for re- evaluation in the manner as prescribed by the Board from time to time" are incapable of any two meanings. The same cannot be stretched to mean that the CBSE, while prescribing the manner, can decide to allow re-evaluation selectively in only some of the subjects of examination in Class XII. The word ''manner'' as commonly understood, connotes the procedure by which re-evaluation would be applied for, i.e., the time within which the re- evaluation shall be applied for and the charges / fees etc. to be paid for re- evaluation etc. If the purport of the amendment with effect 11th March, 2015 was to empower the CBSE to introduce

re-evaluation stage-wise, as is suggested is being done, nothing prevented the CBSE from, while amending the Bye-law, use the words "in such of the subjects as may be prescribed".

11. The argument, that this is the way in which the Bye-law has been interpreted by the CBSE also is of no avail. Once a Bye-law admittedly stands on a higher footing than the administrative circular which has been issued, the understanding, if any, of the Controller of Examination thereof or the difficulties if any faced in introducing re-evaluation in all the subjects at the same time is irrelevant. Difficulty involved in implementing a law is no ground to apply the provision of law in a manner different from what the law means, as discussed by the Division Bench of which undersigned was a member in Amit Bhagat Vs. Govt of NCT of Delhi All the said considerations were for the authority making the Bye-law to consider at the stage / time of making the said Bye- law and that authority having allowed re-evaluation generally and having empowered the CBSE only to prescribe the method / manner of seeking re- evaluation, CBSE cannot whittle down the aforesaid Bye-law and, while prescribing the manner, also restrict the subjects in which re-evaluation can be sought.

12. Besides the judgments supra copies of which have been given by the counsel for the petitioner, reliance in this regard may also be made to, (a) Dhanjibhai Ramjibhai Vs. State of Gujarat, AIR 1985 SC 603 : (1985) 22 ELT 640 : (1985) 51 FLR 77 : (1985) LabIC 744 : (1985) 2 LLJ 521 : (1985) 1 SCALE 65 : (1985) 2 SCC 5 : (1985) 2 SCR 632 laying down that the power to extend the period of probation must not be confused with the manner in which the extension may be affected and that merely because procedural rules have not been framed, does not imply a negation of the power; (b) Mahindra and Mahindra Ltd. Vs. Union of India (UOI) and Another, AIR 1979 SC 798 : (1979) 49 CompCas 419 : (1979) 2 SCC 529 : (1979) 2 SCR 1038 laying down that the words "in the manner in which it was made" in Section 13(2) of the Monopolies and Restrictive Trade Practices Act, 1969 merely indicate the procedure to be followed by the commission in amending or revoking an order and have no bearing on the content of the power granted under Section 13(2) or on its scope and ambit; (c) Shankarlal Aggarwal and Others Vs. Shankarlal Poddar and Others, AIR 1965 SC 507 : (1965) 35 CompCas 1 : (1964) 1 SCR 717 ; (d), Ashok Kumar Singh Vs. Union of India (UOI) and Others :

13. I may notice that the date prescribed for seeking re-evaluation is over and it is not the case of the respondent No. 2 CBSE that there are others apart from petitioner who have sought revaluation of the theory examination in the subject of Physical Education. The possibility thus of this order opening the floodgates and leading to a large number of students seeking re-evaluation in the subject of Physical Education or in subjects other than those covered by the Circular aforesaid of the CBSE, does not arise. Anybody else who may have applied for re-evaluation and which has been denied on similar grounds, having not approached this court would even otherwise not be entitled to the relief.

14. The petition is accordingly allowed. The respondent No. 2 CBSE is directed to, in accordance with the Bye-law and the Circular and any other rules applicable, re-evaluate the answer sheet of the theory examination of the petitioner in the subject of Physical Education within a period of one week from today and if there is any change in marks, the re-valuated result be also declared within the said time. It is further clarified that the absence of online application for re-evaluation and for which there was no provision, would not be treated as non compliance by the petitioner of the procedure prescribed by the CBSE for seeking re-evaluation.

No costs.

