

(2014) 03 RAJ CK 0065
In the Rajasthan High Court
Case No : Civil Special Appeal No. 829/2013

Swami Keshwanand Rajasthan Agriculture University and Others APPELLANT

Vs

Hari Singh and Others RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Citation : (2014) 03 RAJ CK 0065

Hon'ble Judges : Dinesh Maheshwari, J; Banwari Lal Sharma, J.

Bench : Division Bench

Advocate : Manish Shishodia, for the Appellant

Final Decision : Dismissed

Judgement

1. The respondents of S.B. Civil Writ Petition No. 8589/2013 seek to maintain this intra-court appeal against the order dated 15.07.2013, whereby the learned Single Judge of this Court has allowed the said writ petition and has directed the present appellants to allow the writ-petitioner (respondent No. 1 herein) to rectify the mistake committed by him while filling in the OMR Sheet of the entrance test for admission to the Post Graduation Course; and has also directed the appellants to scrutinize the OMR Sheet of the writ-petitioner after such rectification and to accord him admission in the Post Graduation Course, if he has secured sufficient marks for such admission.

2. The memo of this appeal against the order dated 15.07.2013 was filed in the Registry on 23.07.2013. However, it was not accompanied by the certified copy of the order impugned. The certified copy was filed only on 11.02.2014. The Office has, accordingly, reported on limitation that this appeal is time-barred by 151 days, particularly with reference to the date of filing of the certified copy of the order impugned.

3. The appellants have filed an application (CMCW No. 102/2014) seeking condonation of delay while stating as under:-

"(2) That the certified copy of the order impugned dated 15.7.2013 was not received by the undersigned at the time of filing of appeal however the appeal was filed within time. The certified copy of the appeal was then applied for and the same was received and immediately filed on 11.2.2014.

(3) That prior to this above the appellant university considered the matter and appointed an officer to collect the case file and opinion from the university advocate representing the appellant before the learned Single Judge. However the matter was sent to the undersigned for filing appeal before the Hon"ble Division Bench enclosing a photocopy of the order but without enclosing the certified copy of the order impugned herein. Apparently the appellant university did not receive the certified copy of the order from the previous counsel and since the appeal had already been filed the appellants had no option but to file fresh application for certified copy of order dated 15.7.2013.

(4) That thus, the delay caused in filing the appeal is bona fide and unintentional and in any way, neither the present appellant can be said to be negligent nor the delay can be said to be gross or malafide and therefore, the delay deserves to be condoned and the appeal filed by present appellants/applicant is required to be heard on merits."

4. Thus, it is the so-called bona fide mistake which has been put forward as a ground for not filing the certified copy of impugned order earlier and, according to the appellants, the delay cannot be said to be gross or mala fide.

5. Having regard to the submissions made, we are inclined to ignore the delay that has occurred essentially for a technical fault, and, may be, for a bona fide mistake on the part of the persons dealing with the matter on behalf of the appellant-University but then, we are clearly of the view that the very same considerations, for which the bona fide mistake on the part of the persons dealing with the matter on behalf of the respondent-University is to be excused, in all fairness, apply to the case of the writ-petitioner too; and he deserves not to be punished for a bona fide mistake.

6. The sum and substance of the matter remains that the writ-petitioner appeared in the entrance test for admission in Post Graduate Course conducted by the University. The writ-petitioner was required to fill up the OMR Sheet for the purpose of the said examination and one of the columns to be darkened related to the series of the question book-let supplied to him. It is an admitted position that the writ-petitioner was supplied the question book-let of "D" series but he omitted to darken the relevant circle indicating the series of question book-let. Obviously, the OMR Sheet of the writ-petitioner could not be scrutinized by the mechanical process for his omission to indicate the question book-let series. It is, however, an admitted position that on the answer key published by the appellant-University, the writ-petitioner has got sufficient marks for his admission in the Post Graduate Course.

7. The learned Single Judge took note of the peculiar facts and circumstances of

the case and granted relief to the writ-petitioner in the order impugned that reads as under:-

"The petitioner has preferred this writ petition while stating that he appeared in Entrance Test for admission in Post Graduation Course conducted by the respondent-University, however, as the OMR Sheet has not been duly filled, his result of the entrance test has not been declared. It is averred in the writ petition that on account of bona fide mistake, the petitioner has failed to darken the Column-D in the OMR Sheet as required for the purpose of checking it by the computer.

Reply to the writ petition has been filed on behalf of the respondent-University and it is stated that there is no fault of the respondent-University if the petitioner has not filled in the OMR Sheet as per the instructions and, therefore, no relief can be granted to the petitioner.

The learned counsel for the petitioner has contended that as per the answer key published by the respondent-University, the petitioner has got sufficient marks for his admission in the P.G. Course. It is also stated by the learned counsel for the petitioner that on account of the bona fide mistake, a year of the petitioner will be ruined. It is also stated that the petitioner belongs to category of defence personnel and, therefore, he should be allowed to pursue the P.G. Course conducted by the respondent-University.

Since the petitioner has obtained sufficient marks in the examination for the purpose of admission in the P.G. Course, this Court is of the opinion that the petitioner should be allowed to make necessary rectification in OMR Sheet.

In the peculiar facts and circumstances of the case, this writ petition is disposed of with a direction to the respondent-University to allow the petitioner to rectify the mistake committed by him while filling the OMR Sheet. After such rectification, the answer-sheet of the petitioner may be scrutinized and if the petitioner has got sufficient marks for admission in P.G. Course, he may be allowed to pursue the same in accordance with law."

8. Seeking to question the order aforesaid, it is submitted that when the candidate failed to darken one of the four circles to indicate the series of question book-let, the OMR Sheet could not have been evaluated in the mechanical process. It is contended that when, admittedly, the writ-petitioner did not fill up the OMR Sheet as per the instructions, the appellants were not at fault and merely because the candidate was likely to pass, all other rules of examination could not have been ignored. It is also submitted that the mistake is referable to the candidate alone and the order of the nature as passed by the learned Single Judge is likely to cause serious prejudice to the appellants in conducting such examinations; and it would render the process rather uncertain.

9. So far the present case is concerned, we are not inclined to accept the contentions urged on behalf of the appellants.

10. As noticed, when the human agencies are at work, committing of some bona fide mistake here or there cannot be ruled out. It is, of course, true that the candidate is required to fill up the OMR Sheet as per the instructions and the University cannot be blamed for a mistake on the part of the candidate but the question of putting the blame is not decisive of the matter. It is, in our view, substance of the matter in each case that is required to be considered on its own merit.

11. In the present case, admitted position it is that the candidate had otherwise done reasonably well in the examination and the answers given by him do provide him sufficient marks for admission to the Post Graduate Course. The writ jurisdiction of this Court, apart from other features, is a discretionary one wherein, the considerations of equity do have their own significance. When the learned Single Judge has taken into consideration the totality of facts and circumstances and then, has allowed the writ petition, we find nothing of indiscretion or infirmity so as to consider interference in intra-court appeal.

12. However, in the interest of justice, it is, of course, required to be made clear that such directions remain case-specific and are related only to the singular facts and circumstances of the given case; and cannot be considered as laying down a law of uniform application that irrespective of the nature of mistake committed, the candidate is bound to get relief. It would, as observed, essentially depend on the facts and circumstances of each case.

13. The order passed by the learned Single Judge in the peculiar facts and circumstances of this case not calling for any interference, this appeal deserves to be, and is, hereby dismissed.