
(1998) 01 GAU CK 0015
In the Gauhati High Court
Case No : Civil Rule No. 328 of 1997

Tinku Mandal

APPELLANT

Vs

Tripura Board of Secondary Education and Another

RESPONDENT

Date of Decision : 19-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 1 GLT 256

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : S. Talapatra, for the Appellant; P.K. Paul, for the Respondent

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution, the Petitioner Smti Tinku Mandal has challenged the evaluation of her answer scripts in the Higher Secondary (+2 Stage) Examinations, 1996, by the Tripura Board of Secondary Education.

2. The facts briefly are that the Petitioner was studying in the State of West Bengal before her marriage but could not complete the course of Higher Secondary in the State of West Bengal as she got married and settled at Agartala. She applied through the Head Mistress of Bani Vidyapith Girls' H.S.School for taking Higher Secondary (+2 stage) Examination in the year 1996 conducted by the Tripura Board of Secondary Education, (for short, "TBSE") and she was issued with the Admit Card and Registration Certificate and allowed to take the examination with Roll AGAR/F/Est. No. 52005 and Registration No. Ext. 3003 of 1995-96 as an external examinee. After taking the examination the Petitioner's expectation was that she would secure 45% marks in average on all subjects. But when the mark-sheet was given to the Petitioner, she found that she had secured only 39 marks out of 200 marks in Bengali, 51 out of 200 in political science, 27 out of 200 in History and 58 out of 200 in sociology. Not satisfied with the said evaluation made by the TBSE, she submitted an application dated 6.7.96 with the requisite fees for post-publication review of her

answer scripts and pursuant to the said application her answer scripts were reviewed and while her marks 29 out of 200 in English and 27 out of 200 in History were not changed in such review, her marks in Bengali were increased from 39 to 49 out of 200, in political Science from 51 to 63 out of 200 and in sociology from 58 to 62 out of 200. Still not satisfied with the said marks awarded to her on post-publication review, she addressed a representation dated 6.2.97 to the Secretary of the TBSE requesting him to make arrangement for re-evaluation/re-examination of the answer scripts in the aforesaid papers but by letter dated 14.3.97, the said request was turned down by the Secretary, TBSE. Aggrieved, the Petitioner has filed the present Civil Rule for appropriate direction.

3. When the civil rule was moved before this Court on 21.5.97, the learned single Judge while issuing notice of motion directed the Respondents to produce the answer scripts of the Petitioner in sealed cover before this Court and pursuant to the said direction the answer scripts were produced before the Court in sealed cover on 3.7.97. On 3.7.97, the learned single Judge after taking into consideration the grounds in the writ petition that there was no competent Examiner in the subject Sociology engaged by the TBSE for examining the Sociology answer scripts of the candidates who had taken the examination in the year 1996, passed orders asking the Secretary, T.B.S.E. to file an affidavit disclosing the names of the Examiners and Scrutinisers including the Head Examiner of Sociology in the examinations held in 1996. But the said order dated 3.7.97 was challenged by the Respondents in Writ Appeal No. 71/97 and set aside by the Division Bench by order dated 20.11.97.

4. At the hearing of this Civil Rule, Mr. S. Talapatra, learned Counsel for the Petitioner, submitted that it had been stated by the Petitioner on affidavit in para-11 of the writ petition that the Petitioner had definite information that there had been no examiner for reviewing and examining on the subject Sociology as a result of which discrepancies of a very high order had taken place in the examination in evaluation and examination of answer scripts. He further pointed out that a comparison of the marks awarded in the original mark-sheet and the marks awarded to the Petitioner on post-publication review would show that the Petitioner had been awarded 58 marks in the original mark-sheet in Sociology, but thereafter had been awarded 62 marks on review. He pointed out that similarly the Petitioner had been awarded 39 marks out of 200 in Bengali in the original mark-sheet but awarded 49 marks out of 200 marks in Bengali after review, and 51 out of 200 in political science but 63 marks out of 200 after review. The aforesaid discrepancies of the marks of the Petitioner before and after review would show that the evaluation and examination of answer scripts of the candidates by the TBSE was defective. He also argued that since the answer scripts have now been made available in sealed cover to the Court, on inspection of the said answer scripts the Court will itself come to the conclusion that the evaluation of the answer scripts by TBSE is defective and arbitrary. Mr. Talapatra further referred to the averments in the writ petition that the Petitioner expected as much as 45% marks in average in all the subjects but had been awarded

much below the said 45% marks in average.

5. In reply, Mr. P.K. Paul, learned Counsel for the Respondents produced before the Court a copy of the Circular dated 4.5.81 of the Secretary, TBSE, to all the Heads of the Recognized High and Higher Secondary Schools relating to post-publication review of answer scripts/post-publication scrutiny of answer scripts in which it has been stated that an unsuccessful candidate may apply to the Board for post-publication review of his/her answer scripts. He also produced before the Court a copy of the Minutes of the Annul General Meeting of the Tripura Board of Secondary Education held on 10.3.81 in which the TBSE has taken a decision to restrict the benefit of post-publication review only to unsuccessful candidates of Madhyamik and H.S (+2 stage) Examination. He submitted that in accordance with the said circular and decision of the TBSE and pursuant to the application dated 6.7.96 of the Petitioner, the answer scripts of the Petitioner were reviewed and after such review the mark-sheet was furnished to the Petitioner and there was no scope as per the said circular and decision of the TBSE for another review of the answer scripts of the Petitioner, and it is for this reason that the request of the Petitioner for further review was turned down by letter dated 14.3.97 of the Secretary of the TBSE. Mr. Paul further referred to the column-8 of the application for post-publication review dated 6.7.96 submitted by the Petitioner in which the Petitioner had bound herself to accept the award made after review and had agreed that the consequential changes, if any to the mark-sheet, would be final and irrevocable, and argued that in view of the said undertaking given by the Petitioner in her application for review, she cannot now come before this Court and challenge the marks awarded to her in review. Mr. Paul finally contended that the averments in paragraphs-7, 8 and 9 of the counter-affidavit filed on behalf of the Respondents would show that the Petitioner had appeared at the Madhyamik Examination in the West Bengal Board of Secondary Education in 1987 but did not come out successful in the said examination and that she thereafter passed the Madhyamik Examination of the West Bengal Board of Secondary Education in the year 1989 as a compartmental candidate and that even at the test examination at Bani Vidyapith Girls's H.S.School she had secured an average of 31.8 marks in all subjects and, therefore, she was not expected to secure 45% marks in average in the examination as claimed by her. Considering her aforesaid background, Mr. Paul submitted that the marks awarded to the Petitioner on review cannot be said to be arbitrary or unjustified.

6. In matters relating to evaluation of answer scripts of candidates taking any examination, it is for the experts engaged by the Authority conducting the examinations to evaluate the answer scripts and the Court in exercise of the powers of judicial review cannot sit as an appellate authority over such evaluation made by the experts engaged by the Authority. In the instant case, the TBSE in para-8 of their counter-affidavit have clearly stated that the answer scripts were examined and scrutinised by the qualified teachers of the respective subjects under the direct supervision of the Head Examiners. In para-9 of the counter-affidavit, it has further been stated that when the Petitioner applied for

post-publication review of the answer scripts of all subjects she offered in the H.S (+2 stage) Examination, 1996, her answer scripts were reviewed by the qualified examiners who used to act as the Head Examiners of the concerned subjects. In para-10 of the counter-affidavit, it has further been stated that the apprehension of the Petitioner that there had been no review of certain papers at all. And that some papers, like Sociology, were reviewed by persons who were not acquainted with the subject, is baseless and that each and every answer script was duly reviewed by the qualified Head Examiner including the subject of Sociology. Thus it is clear that competent experts had evaluated and reviewed the answer scripts of the Petitioner in all subjects including Sociology and this Court cannot in exercise of its power of judicial review interfere with the marks allotted to the Petitioner by such experts on re-evaluation or review of the answer scripts.

7. However, for the purpose of finding out as to whether the re-examination or review was perverse and arbitrary so as to call for interference by this Court, I perused the answer script of the Petitioner in the subject English and after perusal of the same, I find that the marks awarded to the Petitioner in the said subject by the examiner or head-examiner cannot be held to be perverse or arbitrary calling for interference by this Court by way of judicial review. In absence of any perversity or arbitrariness in the evaluation or re-examination of the answer scripts by the experts, the Court cannot possibly substitute its own evaluation or re-evaluation for that made by the experts. So far as the answer scripts of the Petitioner in other subjects are concerned, I find that they are in Bengali and have been re-examined on a post-publication review by competent experts and awarded marks and it is difficult for this Court to come to the conclusion that the re-examination is perverse or arbitrary.

8. In the result, this writ petition has no merit and is accordingly dismissed. However, considering the entire facts and circumstances of the case, the parties shall bear their own costs.