

(1997) 10 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 2263 of 1997

Yudhvir Singh Sisodiya

APPELLANT

Vs

Dr. Babasaheb Ambedkar Marathwada University and others

RESPONDENT

Date of Decision : 08-10-1997

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1998) 2 ALLMR 423 : (1998) 2 BomCR 435 : (1998) 2 MhLj 721

Hon'ble Judges : V.R. Datar, J;N.P. Chapalgaonker, J

Bench : Division Bench

Advocate : S.B. Talekar, for the Appellant; S.C. Bora and R.S. Deshmukh, for the Respondent

Judgement

N.P. Chapalgaonker, J.—Heard Shri S.B. Talekar, learned Counsel for the petitioner and Shri S.C. Bora, learned Counsel for the respondents University.

2. This petition challenges Ordinance No. 105 Clause (iv) framed by Dr. Babasaheb Ambedkar Marathwada University, Aurangabad inasmuch as it lays down that the benefit of revaluation is only be given in cases wherein the difference between the marks obtained at the first valuation and the revaluation vary by more than 10% of the maximum marks allotted to that paper or subject. The petitioner, who appeared for B.E. (Electronics) examination with seat No. 221624, secured 29 marks in the examination held in December 1996. He applied for revaluation and in the revaluation, he secured 38 marks. The paper for the subject of Electronics was of 100 maximum marks. As per the Ordinance No. 105{iv), the University authorities declined to give the benefit of the added marks to the petitioner since only nine marks were added which were less than 10% of the maximum marks allotted to the paper. Petitioner challenges this provision and contends that if the revaluation is permitted under the Rules, whatever benefit a candidate may get, should be credited to him and the restriction imposed that the benefit only be given in case it is more than 10%, is totally unreasonable.

3. Shri Talekar, learned Counsel for the petitioner, contended that there may be a limited right of revaluation but once the revaluation right is accepted, it cannot be conditioned by saying that the benefit would be given only in case the variation between the two valuations is of a particular degree. Once the University accepts revaluation as a right of the examinee, then it cannot be restricted by such a provision. Shri Talekar contends that the fact that the marks were increased, itself shows that the first valuation was not proper and there is no justification for refusing the benefit to the candidate merely on the ground that the marks additionally secured by him in the revaluation are less than 10%. Shri Talekar further contended that in Nagpur University, the difference of 5% or more marks permits credit of revaluation. He also contended that the rules framed by various Universities in the State differ on the point and there is a need for standardization: He relied on two judgments of this Court reported in 1992 MLJ. 284, *Kishore Kumar Choudhari v. Registrar, Marathwada University*, and *Viraf Noshir Bilimoria Vs. University of Mumbai*, .

4. The University rule prescribes that recounting would be a part of revaluation and when a candidate applies for revaluation, recounting shall automatically be done. In both these cases cited, the difference between the marks obtained by the candidates in the first valuation and in the revaluation was admittedly more than 10%. However, before the papers were taken for revaluation, as provided by the rules, the total of the marks was scrutinised and in the recounting, it was found that the candidate is getting some more marks than originally intimated. Therefore, firstly in the process the marks were corrected and increased. The difference between these increased marks and the marks obtained by the candidate at their valuation did not have the required difference of 10%. Therefore, the University authorities refused to give the benefit of revaluation to these candidates. The Division Bench of this Court in the case of *Kishore Kumar* (cited supra) and the learned Single Judge of this Court in the case of *Viraf Noshir* (cited supra) ruled that since the recounting is a part of the revaluation process, the University cannot first recount and then calculate the difference which is required for giving benefit of revaluation to a candidate. Recording this opinion, these two judgments quashed the order of the Universities and directed that the benefit of revaluation should be given to the candidates.

5. In the instant case, there is no difference by any recounting and in recounting, whatever marks the candidate had already been intimated, remained unchanged i.e. 29. Admittedly, the candidate has received 38 marks in revaluation and the difference is thus of 9 marks, which is not changed at any stage. The position that the candidate had secured 29 marks at the first valuation has not been disputed before us. Therefore, these two judgments can hardly further the cause of the petitioner.

6. Shri Talekar then invited our attention to the judgment of a learned Single Judge of this Court (S.M. Daud, J.) reported in *Rajendrakumar Chandrakant Nadkarni Vs. University of Bombay* and another, , wherein the Ordinance framed

by the University of Bombay laying down that the benefit of revaluation shall not be taken into consideration for the award of prizes, scholarships, medals etc., was struck down by this Court. The learned Judge, with whom we also respectfully concur, rightly held that when the revaluation marks are accepted for a purpose, the University cannot deny the consequential benefits to the candidate for some other purpose. Even this case has absolutely no relevance with the case at hand.

7. The learned Counsel further contended that any observation in the judgment, without considering the challenge to a particular rule or a provision, will not be binding and the matter will have to be decided afresh. We do not have any quarrel with the proposition advanced by the learned Counsel. We, therefore, propose to consider the submissions made before us.

8. Academic standards is a matter within the jurisdiction of autonomous educational institutions. University as statutory body regulated by the academicians, has a right to frame its own rules fixing the syllabus and the standard of passing. As is pointed out by the learned Counsel, different Universities in the State have fixed different standards and different rules regarding the revaluation also. We are told by the Counsel that the Universities of Bombay and Marathwada have decided that benefit of revaluation shall not be given unless the difference between the two valuations is 10% or more of the maximum marks prescribed whereas the Nagpur University gives the benefit if the difference is 5% or more. We are also told by the learned Counsel for the University Shri Bora that Swami Ramanand Teerth Marathwada University, Nanded has cancelled the Ordinance regarding revaluation and revaluation is not now permitted in that University. We are also told that in some Universities, there is no such restriction and the marks added by revaluation, however small may be, are allowed to be credited. Therefore, the Universities differ on the point and it is for the authorities of the University to decide in what class of cases, the benefit of revaluation should be given.

9. So far as the reasonableness of the rule, we can see an object behind the restriction. The valuation of an answer book by a human agency will always differ from man to man. It can not always be mathematically exact. Therefore, small variation like 1%, 2%, or 3% is likely to be there when one paper is examined by two different persons. Therefore, there should be some criterion as to when such difference should be accepted. The University authorities, it appears, thought it fit that a difference of 10% indicates that there is something wrong in the valuation. It is true that one may argue that 9% difference and 10% difference do not vary much but some line will have to be drawn if the rule is to be made and the University authorities drew that line at 10%. We do not think that this was without any purpose or had nothing to do with the object to be achieved. Therefore, we uphold the validity of this Ordinance and hold that the Clause (iv) of Ordinance No. 105 framed by Dr. Babasaheb Ambedkar Marathwada University, Aurangabad was well within its jurisdiction and is a valid exercise of

the powers.

10. It was further contended before us that Clause (iv) would be discriminatory since it discriminates between the students who have secured 9% more marks and the class of students who have secured 10% or more marks in the revaluation. These two are separate classes and for the necessity of implementation of the rule, the classification is validly made. Therefore, we do not think that this portion of the Ordinance offends the guarantee of Article 14 of the Constitution of India.

11. In the premises of these circumstances, we do not find that any interference is called for in the petition. The petition is summarily rejected.

12. Petition dismissed.