Rajesh Kumar Verma Vs High Court of Delhi

Court: Delhi High Court

Date of Decision: Jan. 28, 2013

Citation: (2013) 2 AD 628 : (2013) 198 DLT 199 : (2013) 134 DRJ 174

Hon'ble Judges: Siddharth Mridul, J; Sanjiv Khanna, J

Bench: Division Bench

Advocate: Sanjay Jain, with Mr. Rishab Wadhwa and Mr. Deepak Anand, in Writ Petition Civil No. 337/2013, for the Appellant; Chetan Lokur in Writ Petition (Civil) No. 337/2013, Mr. Viraj R. Datar, Advocate and Mr. Ashish Kumar Pandey, Advocate in both Appeals, for the Respondent

Final Decision: Dismissed

Judgement

Sanjiv Khanna, J.
Aforementioned two writ petitions question the results of Delhi Judicial Services Mains Examination, 2012. Interviews

for selection are to commence on 28th January, 2013 and there being urgency, we have heard the arguments and proceeded to deliver our

judgment, as any delay would have caused prejudice to the petitioners and an interim order that the two petitioners and others similarly situated

should be called for interview would have created its own complications or a stay order would have upset the entire schedule causing prejudice to

others. In these circumstances we have dispensed with the requirement of counter affidavit and the respondents have been permitted to rely upon

data/figures furnished in a form of a chart. Rajesh Kumar Verma, who argued the writ petition in person, has submitted that he had secured

qualifying marks in three papers viz. General Knowledge and Language (115 out of 250), Criminal Law (104 out of 200) and Civil Law-II (103.5

out of 200), but could not qualify Civil Law-I in which he was awarded 53 marks out of 200. Rajesh Kumar Verma moved an application, under

the Right to Information Act, 2005, for inspection of the answer script. On inspection he came to know that in Question No. 1 of Part-A, Civil

Law - I paper, he was awarded "0" (zero) out of 25 marks.

2. The contention of Rajesh Kumar Verma is that the evaluation of Part-A of Civil Law-I paper, in which he scored low marks, was done

arbitrarily since there were no guidelines, scheme of valuation or model answers. Further, there was no system of supervision or review of

assessment i.e. marks awarded by the examiner. This, according to him, has resulted in violation of Article 14 of the Constitution as he has been

denied right to fair evaluation, appearance before the interview panel and possible selection. Reliance is placed on the instructions, in the

examination paper of Civil Law-I, to the effect that ""Even if you do not know the answer, you may attempt the questions as the test is not only of

knowledge of law but of the candidate''s analytical skill also."" In support of his contentions, Rajesh Kumar Verma has relied upon decisions of the

Supreme Court in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, ; Y. Srinivasa Rao Vs. J. Veeraiah and Others, ; The

Institute of Chartered Accountants of India Vs. Shaunak H. Satya and Others, and decision of Kerala High Court in Dr. B.K. Madhumohan and

Another Vs. State of Kerala and Others . Reliance was also placed upon the decision of the Bombay High Court in Sunil Kumar Sharma and

others Vs. University of Bombay and another, , to contend that there is difference between re-evaluation of examination paper, which may not be

permissible unless there is a rule or policy to the said effect, and cases where the examiner or the examination results itself are faulty because the

examiner has not followed certain basic parameters or standard of assessment. He has contended that his case falls into the latter category.

3. On the other hand, learned Senior Advocate, appearing for Bhupender Pal Sharma, has impelled that it is open to the court to direct re-

evaluation or rechecking of answer-sheets when the rules, policy or terms of examination are silent. Reliance has been placed on the judgment of

this Court in Writ Petition (Civil) No. 2636/2012 titled Salil Maheshwari v. High Court of Delhi, through Registrar General, decided on 4th May,

2012.

4. It was accentuated that the candidate in question, Bhupender Pal Sharma, had secured 79 marks out of 200 marks in Civil Law-I and,

therefore, because of one mark, has failed to qualify for the interview, in spite of securing requisite marks in other written papers. It is submitted

that the said candidate has been awarded ''0'' (zero) mark in Question No. 4(b), out of 12.5 marks allocated to the said question.

5. Another submission made is that 205 candidates, who were declared as qualified in 2nd/3rd list, published on 30th May, 2012, have been

discriminated against because they were asked to appear in the Main Subjective Written Examination merely eight days thereafter, on 9th and 10th

June, 2012. Therefore, the other 346 candidates, whose names were published on 21st April, 2012, benefited by gaining longer time to prepare

for the Main Subjective Written Examination. The discrimination and lack of preparation time is apparent, as it resulted in just 15 out of 215

candidates qualifying for the interview, whereas 61 out of 346 candidates qualified for interview from the earlier list.

6. In the writ petition, filed by Bhupender Kumar Sharma, reliance has been placed upon decision of Kerala High Court in B.K. Madhumohan

(supra) and the decision of Supreme Court in Y. Srinivasa Rao (supra) and Sanchit Bansal and Another Vs. The Joint Admission Board (JAB)

and Others, and Sanjay Singh and Another Vs. U.P. Public Service Commission, Allahabad and Another, .

7. In order to decide the above contentions, certain basic facts may be noticed. Recruitment of judicial officers to Delhi Judicial Service is held as

per the procedure, criteria and qualifications prescribed under the Delhi Judicial Service Rule, 1970. The said rules (See Appendix to the Rules)

prescribe a three stages process. In the first stage, the eligible candidates appear in the objective type multiple choice examination and, on the basis

of their scores, qualify to appear in the Delhi Judicial Service Mains Written Examination. This written examination is subjective with long answers

and consists of four distinct papers, General Knowledge & language, Civil Law-I, Civil Law-II and Criminal Law. General candidates who secure

50% marks in aggregate and 40% marks in each paper and 45% marks in aggregate and 35% marks in each paper, if he/she belongs to the

reserved category, qualify for the interview.

8. The Civil Law-I paper, in the present case, consisted of two parts ''Part-A'' and ''Part-B''. The cumulative marks, obtained in both the parts,

have been taken into consideration for deciding whether the minimum criteria, as mentioned in the rules, are satisfied by the candidate.

9. Writ petition, filed by Rajesh Kumar Verma, was listed before another Bench and transferred to be listed before this Bench on 16th January,

2013. On the said date, the respondents entered appearance, on advance notice, and their counsel was directed to place on record details which

were relevant and material, in form of data. It was also directed, that to the extent permitted and permissible in law, the said details or data shall be

furnished to the petitioner.

10. The respondents on the next date i.e. 21st January, 2013, placed before us, a chart setting out data required in order to decide the controversy

before us. For the sake of completeness, we are producing the entire chart:-

DELHI JUDICIAL SERVICE MAIN EXAM (WRITTEN)

HELD ON 9th AND 10th JUNE, 2012

PAPER-CIVIL LAW-I

The said figures/data were made available to the learned counsel for Bhupender Pal Sharma whose writ petition came up for hearing before us on

22nd January, 2013.

11. In addition to the said data, the respondents have filed a detailed chart with the name of the candidates, their category and the marks awarded

to each question in Civil Law-I paper, for all candidates who appeared in the Delhi Judicial Service Main Written Examination, held on June,

2012. To maintain secrecy and confidentiality, this data was not provided to the two petitioners. However, the chart, filed in support of the

data/figures quoted above, validates the data quoted above. The said chart will be kept on record in a sealed cover by the Registrar General.

12. At this stage, we would first like to deal with the contention raised by the petitioner Bhupender Pal Sharma that re-evaluation and rechecking

of the question 4(b), in which the said petitioner had secured "0" zero marks out of 12.5 marks, should be permitted. It is an accepted and

admitted position that the rules and the terms, on which the examination was held, are silent regarding re-evaluation. The petitioner propels that

silence does not amount to a negative command and, therefore, does not bar or prohibit re-evaluation. We reject the said contention. The issue in

question is not res integra and has been settled by the Supreme Court in several decisions. In Maharashtra State Board of Secondary and Higher

Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , the Supreme Court has held that direction for re-evaluation

cannot be issued when there is no provision or absence of provision for re-evaluation. In other words, there must be a specific provision for re-

evaluation on merits before it can be directed. The Supreme Court further held that a policy decision or provisions in rules that no re-checking,

verification or re-evaluation will be permitted, cannot be challenged on the ground of arbitrariness or violation of Article 14 of the Constitution,

unless it can be shown that the policy itself was in violation of some statutory provision. It was observed:-

...It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can

best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the

efficacious achievement of the objects and purposes of the Act. ....

...The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be

a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and

improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down

on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the

purposes of the Act...

13. A more categorical exposition on the said principle is elucidated in Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission

and Others, :-

7.... Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evolution of his answer-

book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a

candidate have been examined and whether there has been any mistake in the totaling of marks of each question and noting them correctly on the

first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the

General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has

got any right whatsoever to claim or ask for re-evaluation of his marks.

14. A similar view has been taken Dr Muneeb-ul-rehman Haroon and Others Vs. Government of Jammu and Kashmir State and Others, ; Board

of Secondary Education v. Pravas Ranjan Panda & Anr. (2004) 13 SCC 383 ; The President Board of Secondary Education, Orissa and

Another Vs. D. Suvankar and Another, ; The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das and Others, and

Sahiti and Others Vs. The Chancellor, Dr. N.T.R. University of Health Sciences and Others, .

15. Referring to the aforesaid decisions, the Supreme Court in Civil Appeal Nos. 907/2006 and 897/2006 titled H.P. Public Service Commission

v. Mukesh Thakur & Anr. decided on 25th May, 2010, set aside the judgment and order of High Court and allowed the appeals observing that in

the absence of any provision under the Statute or Statutory Rules/Regulations, the court should not generally direct re-evaluation.

16. The decision of this Court in the case of Salil Maheshwari (supra) and Gunjan Sinha Jain v. High Court of Delhi through Registrar General, WP

(Civil) No. 449/2012, another connected matter decided on 9th April, 2012, are clearly distinguishable and are not contrary to the principle or

ratio stated above. Judgment in Salil Maheshwari''s case (supra) simply refers to the decision in Gunjan Sinha Jain''s case (supra). In Gunjan Sinha

Jain''s case, a Division Bench of this Court noticed defects in some of the objective questions and the suggested correct answers. The answers had

to be marked by pencil for the purpose of Optical Mark Recognition (OMR). It was, in these circumstances that certain directions were issued in

paragraphs 75, 76 and 77 of the judgment, after noticing that the rules stipulated that minimum qualifying marks must be secured and the number of

candidates, to be admitted in the mains examination, should not be more than 10 times the total number of vacancies advertised. Accordingly,

some directions were issued and the condition of permitting appearing candidates to be only 10 times the seats was diluted. This was a pragmatic

solution to the problem which had arisen. In Salil Maheshwari''s case (supra), it was noticed that the petitioner therein, on the basis of computation

of marks, pursuant to decision in Gunjan Sinha Jain''s case (supra), had got 118.5 marks. However, the list of top 230 candidates had ended at

122.5 marks and, therefore, the writ petition of Salil Maheshwari was dismissed.

17. We do not think that the judgment in the case of Gunjan Sinha Jain''s case (supra), postulates re-evaluation or re-examination of a single

answer or the entire paper. The said judgment was given in a peculiar situation, where some questions were ambiguous and debatable, or multiple

choices were incorrect or the answers given in the answer sheet were incorrect. The situation was entirely different. Similarly, in the case of Sunil

Kumar Sharma''s case (supra), the Bombay High Court dealt with a peculiar factual matrix. 729 students had appeared and their papers in

question were checked by 3 different examiners. One examiner had checked and awarded marks to 22 candidates. He failed the entire lot of 22

candidates whose papers were checked by him. They were awarded marks between 4% to 19%. The High Court allowed the writ observing that

there was violation of two statutory paragraphs which stipulated that the Chairman shall discuss the synoptic answers with his examiners to ensure

uniform standard in assessment and the Chairman/Senior Examiner had the right to review the assessment done by the examiner and could issue

instructions to the examiner to review or reassess the answer-sheet. The examiner was to abide by the instructions. The statutory paragraphs were

important as they prevented discrimination when the answer papers were checked by different examiners. Violation of the said paragraphs was the

cornerstone of the said decision. In Sanchit Bansal (supra) it has been observed that Court can interfere and direct re-evaluation of the

performance etc. where (i) there is violation of any enactment, statutory Rules and Regulations; (ii) mala fides or ulterior motives to assist or enable

private gain to someone or cause prejudice to anyone; or where the procedure adopted is arbitrary and capricious. The procedure is arbitrary and

capricious when it is illogical and whimsical, something without any reasonable explanation.

18. In the present case, the answer sheets of Part-A of Civil Law-I, have been examined by one examiner and not by multiple or several

examiners. The said examiner has uniformly applied the same standard while checking the answers of all the candidates. The chart quoted above

shows that, out of 453 candidates, 265 candidates passed Civil Law-I paper and 188 candidates have failed. Substantial number of candidates

have cleared the paper and secured good marks. In Part-A of the said paper, the maximum mark secured by a candidate is 76% and the minimum

marks secured is 7. In Part-B of the paper, which was checked by a different examiner, maximum marks secured is 73% and the minimum marks

secured is 4%. Even in Part-B examination, several candidates have secured "0" zero marks in respect of their answers. The number of candidates

securing "0" zero marks in Part-A paper may be more, but this cannot be a ground to re-examine or re-evaluate the entire paper or even specific

answers. If we allow re-examination or re-evaluation of the answer paper, in one case or even one question, the said exercise may have to be

completed across the board, in all cases where candidates have secured "0" zero or one, two or low marks. No particular candidate can be given

preference. Thus, if the plea of the petitioner is accepted, it will lead to unpalatable and incongruous situation which should be avoid. Rajesh

Kumar Verma has secured 53 marks out of 200 in Civil Law Paper 1 and he is short by 17 marks. The difference is substantial in his case. In

Bhupender Pal Sharma"s case the difference may be of only one mark but this by itself as noticed and elucidated below cannot be a ground to

direct re-evaluation or award grace marks. Given the intense competition, it is not uncommon to come across cases where the difference between

a selected and unselected candidate is in fraction or less than one mark.

19. In matters of examination, especially competitive examination for selection judicial interference should be exercised with care and grave

caution. Such kind of intrusion is rare. We do not think that present case warrants interference and the valuation of marks award in the two

papers/answers are so glaring, absurd or demonstrably un-consciousable that interference is called for. Answers papers of the two petitioners

were in fact shown to us. The present cases do not fall under the limited exceptions carved out in Sanchit Bansal"s Case (supra). Any interference

will lead to gross and indefinite uncertainty besides creating utter confusion. The position which has been highlighted and explained by the Supreme

Court in Maharashtra State Board"s case (supra).

20. The contention of Bhupender Pal Sharma that he should be given one mark, does not have any merit. We noticed that as per the chart, five

candidates have missed the qualifying mark by one and another five candidates by two marks. There is no provision for giving bonus marks or

additional marks to any candidate. It will be improper and incorrect to give bonus mark or even upgrade the marks. In The Registrar, Rajiv Gandhi

University of Health Sciences, Bangalore Vs. G. Hemlatha and Others, it was held:

12. No provision of any statute or any rules framed thereunder have been shown to us, which permit rounding-off of eligibility criteria prescribed

for the qualifying examination for admission to the PG course in MSc (Nursing). When the eligibility criteria is prescribed in a qualifying

examination, it must be strictly adhered to. Any dilution or tampering with it will work injustice on other candidates. The Division Bench of the High

Court erred in holding that the learned Single Judge was right in rounding-off of 54.71% to 55% so as to make Respondent 1 eligible for admission

to the PG course. Such rounding-off is impermissible.

The said judgment also makes reference to an earlier decision in Orissa Public Service Commission and Another Vs. Rupashree Chowdhary and

Another, , that neither grace marks nor rounding off is permissible unless there is a permissible term under which the examinations were held. In the

said case, the candidate in question had secured qualifying marks in each individual paper but in aggregate had 44.93% marks and not 45% marks

as stipulated in the rules. The difference was only 0.07% but the appeal filed was allowed by the Supreme Court and the judgment of the High

Court was set aside, observing that rounding off or additional marks could not have been given.

21. In Umesh Chandra Shukla Vs. Union of India (UOI) and Others, , Full Court resolution of the High Court directing moderation by awarding 2

marks in each paper to all candidates was adversely commented upon and the moderation done was struck down. Exercise of power of

moderation was likely to create a feeling of discrimination in the process of selection and would violate principle of equality and may lead to

arbitrariness. There might be hard cases, but hard cases cannot be allowed to make a bad law.

22. In Rajinder Kumar Aggarwal Vs. High Court of Delhi and Another, , a Division Bench of this court examining the rules, has held that there is

no provision for reevaluation or moderation of answer-sheets. In the said case, the petitioner therein had secured one mark less for qualifying, in

one of the papers, but had obtained sufficient marks in other papers. The petitioner therein had made reference to a Full Court Resolution. The

said contention was rejected, after referring to order dated 26th July, 1985 passed by the Supreme Court in an application in Writ Petition No.

3805/1985 dated 26th July, 1985, which for the sake of convenience is reproduced below:-

At the hearing of the above writ petition Mr. F.S. Nariman, learned counsel for Shri Rajan Sharma, one of the candidates selected for the Delhi

Judicial Service Examination held in the year 1984, who has been impleaded as a respondent in this case submits fairly and we think rightly that in

the absence of an express rule for revaluation it was not possible for the examining body to get one of the answer books of Shri Rajan Sharma

revalued. In the absence of 18 marks which were added at the reevaluation, Shri Rajan Sharma would not have been eligible for the viva voce

examination even though in some of the papers at the examination, he had done well. Shri Rajan Sharma, Therefore, withdraws his application for

appointment to the Delhi Judicial Service. We appreciate the stand rightly taken by Shri Rajan Sharma in this Court. In view of the above we direct

that the name of Shri Rajan Sharma would not be considered by the examining body for the purpose of appointment at the 1984 examination.

sd/-

E.S. Venkataramahia, J.

R.B. Mishra, J.

July 26, 1985.

The Division Bench rejected the contention that the petitioner had excellent academic record and had secured First Division in LL.B. and that 1

(one) grace mark should be given. Similar view has been taken in Sh. Vipon Sanduja Vs. Registrar, Delhi High Court and Another, .

23. The contention that the absence of guidelines, moderation or model answers results in arbitrary checking by the examiner has to be rejected as

unsustainable and meritless. The answer sheets relating to Part-A were examined by one single examiner and not by different examiners. The rules

do not stipulate that there should be model answers or mandatory guidelines, in writing, for assessment. The answer papers have been checked by

examiners who are proficient, well conversant and have knowledge of the subjects. The examination, in question, is for appointment to Delhi

Judicial Service and is a competitive examination and not a college or school examination. High standards are required and justified. The checking

and allotting of marks, for Part-A, may be strict, but this does not mean that Court can interfere in exercise of its jurisdiction under Article 226 of

the Constitution. In matters of evaluation by experts and the standards which should be adopted and applied, the courts cannot substitute or adorn

the role of the examiner. It cannot substitute its own opinion regarding what marks could or should have been awarded, as the result. Interference

is rare and justified only when there is a blatant miscarriage of justice as set out in Sanchit Bansal''s case (supra). The following observations in

H.P. Public Service Commission (supra), are apposite:

19. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the

Commission had assessed the inter-se merit of the candidates. If there was a discrepancy in framing the question of evaluation of the answer, it

could be for all the candidates appearing for the examination and not for respondent No. 1 only. It is a matter of chance that the High Court was

examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematics, we are unable to understand as to

whether such a course have been adopted by the High Court.

24. In view of what we have stated above, we need not specifically deal with the decisions relied upon by the petitioner Rajesh Kumar Verma,

relating to principle of arbitrariness, transparency etc. in the cases of Shrilekha Vidyarthi (supra). In Y. Srinivasa Rao''s case (supra), a better

candidate with the B.Com degree and longer experience was ignored on the ground that the said aspects cannot be taken into consideration for the

purpose of comparison with the selected candidate though they were relevant for the purpose of marks. Selection was by interview and the

allegation was that the interview was a farce. The Supreme Court while allowing the appeal observed that in the absence of guidelines, the selection

was left to the whims of the individual officer holding the interview who had unbridled powers. This is not so in the present case as there was a

written examination and marks have been awarded by examiners. The question papers and answer papers are available. The decision in Dr. B.K.

Madhumohan (supra), is distinguishable for the reason, in the said case the question setters themselves admitted that several questions should be

deleted as there were no correct choices in the answer booklet and the questions were controversial. It is in this context, it was observed that

capricious acts of examiners are not immune from interference of the court. This was a case of blatant miscarriage of justice.

25. The contention raised by Bhupender Pal Sharma regarding lack of preparation time and discrimination, as there were two separate lists and

last and second list came out eight days before the examination, has to be rejected. Having participated in the examination and taken the chance,

the candidate cannot be allowed to object to the date of examination or submit that the examination should have been postponed. The said plea is

unacceptable and would set at naught the entire examination process. It was open to the candidates, who had filed Civil Appeal No. 4794/2012,

before the Supreme Court to raise the said plea. We may only note here that list of 205 candidates dated 30th May, 2012 was circulated pursuant

to the order of the Supreme Court in the judgment dated 28th May, 2012. By that time, the date of written examination in June, 2012 had already

been notified and this was known to all candidates, including the petitioners. Similar contentions were raised in WP (C) No. 3667/2012 Vivek

Tomar v. the Registrar General, High Court of Delhi and WP (C) 3668/2012 Archana Aggarwal v. the Registrar General High Court of Delhi, but

were rejected vide order dated 6th June, 2012, recording that the Supreme Court while passing the order dated 28th May, 2012, did not consider

it necessary to extend the date for conducting the examination. In view of the aforesaid position, the writ petitions are dismissed.

No Costs.