

Raktim Nag Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: April 8, 2010

Citation: AIR 2011 Cal 21

Hon'ble Judges: Biswanath Somadder, J

Bench: Single Bench

Advocate: Ashim Kr. Ganguly, for the Appellant; Partha Sarathi Mullick, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Biswanath Somadder, J.

By order dated 8th January, 2010, this Court directed the West Bengal Council of Higher Secondary Education

to affirm an affidavit indicating whether or not the answer scripts are available since it was brought to the notice of the Court that as per practice,

the answer scripts are preserved for six months by the Council and the examination having been held in the year 2007, there was no direction for

preservation of answer scripts. Today, when the matter was taken up for further consideration, an affidavit affirmed by the Assistant Secretary

(Law) of the West Bengal Council of Higher Secondary Education is filed wherefrom it appears that the answer scripts of the Kolkata Regional

Office (KRO) for the year 2007 were lifted for the purpose of eventual disposal between 14th December, 2007, and 17th December, 2007. It

has also been stated therein that once the process of lifting gets underway, it is impossible to identify and trace out answer scripts of a particular

candidate from the lakhs of answer scripts stored in the godown. It has also been stated in the said affidavit that copy of the earlier writ petition

filed by the writ Petitioner, being W. P. No. 19418(W) of 2007 was served on the Respondent Council along with a forwarding letter of his

learned advocate Mr. Mrinal Kanti Mukherjee, dated 19th December, 2007 by Registered Post, which was received on 26th December, 2007. It

has been specifically stated in the affidavit that the Council did not have any knowledge of filing of the earlier writ petition, till the date of intimation

received from the learned advocate, which was on 26th December, 2007, by which time the answer scripts of the writ Petitioner had already been

dumped in the godown. It has also been stated in the affidavit that the Post Publication Scrutiny result of the writ Petitioner has been duly published

and forwarded to his school along with the result of all other candidates who had applied for Post Publication Scrutiny, within time.

2. In view of what has been stated in the affidavit affirmed on behalf of the West Bengal Council of Higher Secondary Education, I do not find any

merits in the submission made by the learned advocate for the writ Petitioner that it was incumbent upon the Council to have kept the answer

scripts of the writ Petitioner preserved. There was no direction given by this Court in the instant matter, at any stage, upon the West Bengal

Council of Higher Secondary Education, for preservation of the answer scripts of the writ Petitioner. Even in the earlier writ petition moved before

this Court, there was no such order. From the records, it appears that the instant writ petition has been filed before this Court on 9th July, 2008,

that is to say, after almost seven months from the dates mentioned in paragraph 4 of the said affidavit of the Council when the answer scripts of the

Kolkata Regional Office were lifted for the purpose of eventual disposal.

3. The learned advocate for the writ Petitioner has relied on a judgment of the Supreme Court in the case of Union of India (UOI) and Another

Vs. Sudershan Gupta, and submits it was incumbent upon the Council to have kept the answer scripts of the writ Petitioner preserved in the facts

and circumstances of the instant case.

4. Upon perusing the said judgment, I am, however, of the opinion that the ratio of the said judgment is wholly inapplicable in the facts and

circumstances of the instant case, since the writ Petitioner in the instant case did not approach this Court before expiry of the six months time

period, within which period the Council, under its extant rules and regulations, is obliged to keep the answer scripts of the candidates preserved.

The writ Petitioner approached this Court by filing the instant writ petition on 9th July, 2008. As stated hereinbefore, this was after almost seven

months upon expiry of the time-frame for preservation of the answer scripts of the candidates by the West Bengal Council of Higher Secondary

Education, as per its extant rules and regulations.

5. That apart, even when the writ Petitioner moved the earlier writ petition, being W. P. No. 19418(W) of 2007, which was disposed of by

Soumitra Pal, J. on 11th March, 2008, there was no direction for preservation of the answer scripts. All that the Court directed was publication of

results of review within the time-frame as stipulated in the said order.

6. For reasons stated above, the writ petition is liable to be dismissed and is hereby dismissed.