

(2011) 12 CAL CK 0074

Calcutta High Court

Case No: C.A.N. 6926 of 2011 in M.A.T. 1067 of 2011

Nasita Biswas

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Dec. 21, 2011

Citation: (2012) 1 CHN 564

Hon'ble Judges: Tapan Kumar Dutt, J; Soumen Sen, J

Bench: Division Bench

Advocate: Binod Kumar Gupta and Mr. Dipankar Paul, for the Appellant; Madhusudhan Saha Ray for the University and Mr. Joytosh Majumdar for the State, for the Respondent

Judgement

Soumen Sen, J.

With the consent of the parties the appeal is also taken up for hearing along with the application.

2. The plight of a student who had appeared on her Philosophy (Honours) but complained of lack of proper evaluation of her answer-script was the subject matter of challenge in a writ petition being W.P. 5105 (W) of 2011 in which the impugned order was passed.

3. It appears that the learned Single Judge initially had directed the Calcutta University to produce answer script in relation to the said subject, namely, Philosophy (Honours) and it was found that the calculation of the marks appearing on the answer script are correct.

4. Since no irregularity was noticed in the matter of calculation of marks and on the basis of the submission made on behalf of the University that the answer script was properly evaluated during re-examination, the learned Single Judge upon accepting such submission refused to pass any further order and dismissed the writ petition.

5. In the appeal for the purpose of ascertaining the procedure that is required to be followed for the purpose of re-examination we have directed the Calcutta University to file an affidavit to indicate the instruction and/or guidelines that are required to be followed in the matter of re-examination of an answer script.

6. Pursuant to our direction a detailed affidavit was filed on behalf of the University in which apart from dealing with stay petition on merit the University has relied upon the instructions regarding re-examination work issued by the Controller of Examinations as well as Regulation 47(d) of the First Statute regarding reexamination of answer script.

7. We have considered the answer scripts as also the instruction that was produced before us regarding re-examination of answer script. It appears from the answer script that the writ petitioner answered question No.1 (a) (e) (f) and (g), 2,4,6,7 and 10. All the questions that were attempted and answered by the examinee/writ petitioner are multiple questions. Each of such questions is divided into several parts and for each part there is a separate number allotted. To illustrate we may refer to question No.2 which has three parts:

2. What is the first principle of Descartes' Philosophy? How does he arrive at it? Is it truly a first principle or a mere inferential truth? Discuss." 4+6+6

8. The writ petitioner answered the said question in the manner as indicated in the said question and had separately answered each of the questions. However, while awarding the marks the examiner has allotted six and half mark and thereafter put "W". The same pattern was followed in respect of answers of other similar multiple questions. The examiner admittedly did not allot separate mark for each part of the questions forming one set of question and instead followed his own procedure of allotting one single mark. While awarding marks, the examiner has given such one single mark with encircled (W) put beside the mark which according to the University means "whole" mark i.e. the total mark obtained in relation to that particular set of questions, thereby dispensing with the allotment of separate marking for each part of the question. The University in its affidavit affirmed on 16th December, 2011 explained the said procedure in paragraphs 3(d) and 3(f) which are reproduced hereinbelow:

3(d) I state that the Hon'ble Appellate Court further directed for the second time after the order passed by the Hon'ble First Court for production of the answer script and on perusing the answer script, it is pointed out by the Hon'ble Appellate Court that in the answer nos.2,4,6,7 and 10 "W" have been indicated. It is noteworthy to mention that Q.Nos.2,4,6,7 and 10 division of marks are given in the question paper and as such the examiner while examining the entire answers as aforesaid allotted as a whole number to each and every aforesaid question. The "W" signifies "Whole". It is also noteworthy to mention that the question no.1 which is divided from (a) to (j) where four questions have to be attempted the examiner made division of marks in

the end of the answer of question no.1. There are no strict rules on such aspects for mode of examining the answer script by the Calcutta University. The examiner had applied full application of mind as per his discretion while examining the script. The re-examination of the said answer script was made by the Head Examiner as per Regulation 47(a) to the Notification No.CSR/54/09 and he found no irregularity in the marks and there was no change in marks after re-examination.

3(f) I submit there is an instruction regarding the method of re-examination but it is not necessary to be followed in strictosensu. The instruction is not a law although the re-examination was made by an expert and the expert has fully applied his mind during re-examination.

9. Learned Counsel appearing on behalf of the University submitted that notwithstanding division of marks as mentioned and indicated in the question paper, the examiner has discretion to award a single mark but unable to produce any guideline or instruction which permit exercise of such discretion by such examiner. It was further submitted that there is no requirement as such for the examiner to allot separate marks for each part of the question forming one set of question and the examiner has followed a procedure which can be adopted in assessing an answer-script.

10. The University has also relied upon the instruction issued to re-examiner, the relevant portion whereof is reproduced hereinbelow:

In order to ensure that the marks awarded on re-examination can be processed easily and to avoid legal complications the following instructions may kindly be adhered to strictly:

a) Re-examination marks and other indications including comments, if any, be put in ink different in colour from that used by the original examiner.

b) The marks awarded on re-examination be indicated as below both inside the answer-scripts and in the cage on the top-sheet of the answer-scripts. In case marks awarded to a question or the total marks is increased or decreased by "5":

(i) Increase in marks be indicated by R+5.

(ii) Decrease in marks be indicated by R-5.

(iii) No change in marks be indicated by R+0.

This exercise has to be done at all the places where the original examiner has put marks.

c) In the 6th column of the award slip meant for re-examination the change in marks should be indicated as: +5 (in case increase in marks by 5), -5 (in case decrease in marks by 5), +0 (in case there is no change in marks).

11. We are, however, unable to accept such submission and according to us the exercise of such discretion if allowed to be sustained then it would be contrary to the instruction that was produced before us by the Calcutta University. This aspect of the matter was considered by us in a judgment delivered in MAT 530 of 2011 with CAN 4361 of 2011 with W.P. 25105 (W) of 2011 (Averi Mukhopadhyay Vs. State of W.B. & Ors.)

12. In the matter of Averi Mukhopadhyay Vs. State & Ors delivered today we have considered the same instruction and the power of review of the University.

13. In the said judgment we have held that the examiner is required to follow the instruction issued by the Controller of Examiner regarding re-examination of answer script and no deviation therefrom should be permitted.

14. In the instant case the University in no uncertain term in the instruction to the re-examiner used the expression "following instructions may kindly be adhered to strictly.

15. Our reading of the said instructions is that the re-examiner must indicate against each of the answers his comment which may be in the form of R+ or Rin the case of increase or decrease of marks and R+0 in case of no change.

16. It is not in dispute that the re-examination is in effect the reassessment and/or re-evaluation of the answer script. The review and/or re-examination of answer script would mean re-assessment of the answers. The Concise Oxford English Dictionary 10th Edition, defined review as "a formal assessment of something with the intention of instituting change if necessary". The meaning of the word "review" was considered by the Hon"ble Supreme Court in [Lily Thomas, Vs. Union of India and Others](#), to mean that it is the act of looking after something again with a view of correction or improvement.

17. Thus, in reviewing an answer script the reviewing examiner is required to revisit and re-examine all the questions as if he is examining such question for the first time and with an eye to find out if the examiner has really applied his mind and assessed the answer-scripts properly following norms and guidelines applicable in such cases. In fact, it needs a fresh look with a fresh mind. Although, there are no guidelines for review as such apart from instructions as referred to above, such re-examiner has a complete discretion in the matter and manner in which he would re-examine the answer script. Although, we are mindful of the fact that we should not ordinarily re-examine the said answer scripts as a re-examiner who is an expert in the subject but certainly the Court can examine to ascertain if such discretion has been properly exercised by following the proper procedure/guidelines and/or instructions, if any.

18. The learned counsel appearing on behalf of the University has referred to Regulation 47 regarding re-examination of the answer script and submitted that in

the instant case the Head-examiner had re-examined the answer script. Under Regulation 47, the Head Examiner would ordinarily be entrusted with task to re-examine the answer-scripts in the subjects/papers where there is no coordinator/Head Examiner/re-examiner. There are certain duties and responsibilities cast upon the Head Examiner under Rule 77 of the First Statute which, inter alia, includes the following observation:

77(c)(i) to set the standard of valuation of answer papers,

ii) to supervise the valuation of answer papers and ensure uniformity of the standard of marking, by issuing written instructions in detail to examiners working under him and by systematic sampling of at least 5 per cent of the answer papers and by re-visiting the markings where necessary.

iii) to arrange for scrutiny of answer papers so to ensure that each question is marked and that the totals are correctly calculated and entered into the mark sheets

19. Rule 77 (d) contemplates a standard and system of marking that may be mutually decided upon at a meeting of all examiners in certain situations. However, these rules are all at the stage of pre-publication of result.

20. Even if it is assumed that the Head Examiner has re-examined the answer-scripts but certainly the said Head Examiner did not follow the instruction issued by the Controller of Examination. Moreover, it is not possible to arrive at a conclusion that the Head Examiner, if he at all had re-examined it, in fact, had applied his mind since there is no reference and/or mention of any R+, R- or R+0 in the body of the answer-script against each of the questions which are required to be followed in terms of the instructions issued by the Controller of Examination. This aspect of the matter was considered by us in some detail in *Averi Mukhopadhyay's* case.

21. The learned counsel appearing on behalf of the University has relied upon the decision reported in AIR Cal 35 and [Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others](#), for the proposition that in matters relating to education the Court should not interfere.

22. We are fully aware of the scope of judicial review in such matters. We are only examining whether proper procedure was adopted in the matter of reassessment of the answer-script.

23. Moreover, it appears to us that the examiner failed to follow the division of marks as mentioned in the question paper and in such a situation, it would be very difficult for the re-examiner to assess the basis of allotment of marks. The awarding of "W" indicating "whole" mark instead of separate mark for each part is not the proper procedure to be adopted in such examination in absence of any guideline and/or instruction. In such a situation, the re-examiner would be required to give separate marks following the division of marks as mentioned in the question paper

and then to assess the propriety and/of reasonableness of the marks as allotted by the examiner. These are the matters which persuaded us to direct for re-assessment of the said answer-script.

24. In an examination of this large scale in which the fate of several students is decided, there should be a proper procedure and guideline both at the stage of pre-publication of result and post-publication of result.

25. Since such examination concerns the fact of large number of students, we feel that the University should frame appropriate rules or regulations depending upon the objective and subjective nature of questions in relation to a particular subject so that at both stages of pre-publication and post-publication a student gets a fair deal and he is being assessed properly according to his own merit. The Hon"ble Supreme Court while dealing with public examinations explained the standard process of moderation of [Sanjay Singh and Another Vs. U.P. Public Service Commission, Allahabad and Another](#), in the following manner;

When a large number of candidates appear for an examination, it is necessary to have uniformity and consistency in valuation of the answer scripts. Where the number of candidates taking the examination are limited and only one examiner (preferably the paper-setter himself) evaluates the answer scripts, it is to be assumed that there will be uniformity in the valuation. But where a large number of candidates take the examination, it will not be possible to get all the answer scripts evaluated by the same examiner. It, therefore, becomes necessary to distribute the answer scripts among several examiners for valuation with the paper-setter (or other senior person) acting as the Head Examiner. When more than one examiner evaluate the answer scripts relating to a subject, the subjectivity of the respective examiner will creep into the marks awarded by him to the answer scripts allotted to him for valuation. Each examiner will apply his own yardstick to assess the answer scripts. Inevitably therefore, even when experienced examiners receive equal batches of answer scripts, there is difference in average marks and the range of marks awarded, thereby affecting the merit of individual candidates. This apart, there is "Hawk-Dove" effect. Some examiners are liberal in valuation and tend to award more marks. Some examiners are strict and tend to give less marks. Some may be moderate and balanced in awarding marks. Even among those who are liberal or those who are strict, there may be variance in the degree of strictness or liberality. This means that if the same answer script is given to different examiners, there is all likelihood of different marks being assigned. If a very well written answer script goes to a strict examiner and a mediocre answer script may be awarded more marks than the excellent answer script. In other words, there is "reduced valuation" by a strict examiner and "enhanced valuation" by a liberal examiner. This is known as "examiner variability" or "Hawk-Dove" effect. Therefore, there is a need to evolve a procedure to ensure uniformity inter se the examiners so that the effect of "examiner subjectivity" or "examiner variability" is minimized. The procedure

adopted to reduce examiner subjectivity or variability is known as moderation. The classic method of moderation is as follows;

ii) To achieve uniformity in valuation, where more than one examiner is involved, a meeting of the Head Examiner with all the examiners is held soon after the examination. They discuss thoroughly the question paper, the possible answers and the weightage to be given to various aspects of the answers. They also carry out a sample valuation in the light of their discussions. The sample valuation of scripts by each of them is received by the Head Examiner and variations in assigning marks are further discussed. After such discussions, a consensus is arrived at in regard to the norms of valuation to be adopted. On that basis, the examiners are required to complete the valuation of answer scripts. But this by itself, does not bring about uniformity of assessment inter se the examiners. In spite of the norms agreed, many examiners tend to deviate from the expected or agreed norms, as their caution is overtaken by their propensity for strictness or liberality or eroticism or carelessness during the course of valuation. Therefore, certain further corrective steps become necessary.

iii) After the valuation is completed by the examiners, the Head Examiner conducts a random sample survey of the corrected answer scripts to verify whether the norms evolved in the meetings of examiner have actually been followed by the examiners..

iv) After ascertaining or assessing the standards adopted by each examiner, the Head examiner may confirm the award of marks without any change if the examiner has followed the agreed norms, or suggests upward or downward moderation, the quantum of moderation varying according to the degree of liberality or strictness in marking. In regard to the top level answer books revalued by the Head Examiner, his award of marks is accepted as final.

As regards the other answer books below the top level, to achieve maximum measure of uniformity inter se the examiners, the awards are moderated as per the recommendations made by the Head Examiner.

v) If the opinion of the Head Examiner there has been erratic or careless marking by any examiner, for which it is not feasible to have any standard moderation, the answer scripts valued by such examiner are re valued either by the Head Examiner or any other Examiner who is found to have followed the agreed norms.

vi) Where the number of candidates is very large and the examiners are numerous, it may be difficult for one Head Examiner to assess the work of all the Examiners. In such a situation, one more level of Examiners is introduced. For every ten or twenty examiners, there will be an Examiner who checks the random samples as above. The work of the Head Examiners, in turn, is checked by a Chief Examiner to ensure proper results.

The above procedure of "moderation" would bring in considerable uniformity and consistency. It should be noted that absolute uniformity or consistency in valuation is impossible to achieve where there are several examiners and the effort is only to achieve maximum uniformity.

Each examining body will have its own standards of "moderation", drawn up with reference to its own experiences and the nature and scope of the examinations conducted by it.

26. What was really emphasized was the uniformity and consistency in the process of examination which necessarily *mutatis mutandis* would be applicable to re-examination.

27. Once the University has given a student the right to demand review of his or her answer-script, it is expected that the reviewing examiner should examine each of the answer-scripts with a fresh mind as if he is assessing the said answer-script for the first time and not mechanically. Even in absence of any instruction or guideline the procedure to be adopted should be fair and reasonable. The right of an examinee to demand review of answer-script is not in dispute. Apart from the rules of the University permitting review the Right to Information Act(22 of 2005) also gives right to an examinee to demand inspection of answer-script and the same is judicially recognized in the case of *C.B.S.E Vs. Aditya Bandyopadhyay* reported in 2011 (4) WBLR (SC) 329. In fact, such right of inspection to answer-script has been recognized and allowed by our High Court in the case of [Pritam Rooj Vs. University of Calcutta and Others](#), . The judgment of the learned Single Judge was affirmed by the Hon"ble Division Bench in [University of Calcutta and Others Vs. Pritam Rooj](#), In view of such pronouncements it was now all the more necessary that the University should frame appropriate guideline in matters relating to review of answer-script. This will not only inspire the confidence of the students but the same would also increase the credibility of the University and its faculty. The Calcutta University being a premier institution, it is expected, would frame appropriate guideline in addition to the instructions regarding re-examination and/or reevaluation of the answer-script.

28. The instructions to re-examiner, in our view, should have been more instructive. In an examination of this large scale in which the fate of several students are decided, there should be a proper procedure and guideline both at the stage of pre-publication of result and post-publication of result. A student can reasonably and legitimately expect that his answer-script has been properly assessed.

29. We find as we mentioned hereinabove that the instructions of the Controller of Examination were not followed. Moreover, the examination of the answer script would clearly show that the examiner did not follow the procedure which is required to be followed for awarding marks. The re-examiner has also overlooked this aspect of the matter. There is no material on record to show that even guideline for

moderation, namely (iv) and (v) as laid down by the Hon"ble Supreme Court in Sanjay Singh's case (supra) was followed. In view of such facts we are inclined to interfere in this matter and we are of the view that there has been no proper evaluation of the re-examination of the said answer script and accordingly, we direct the Controller of Examinations to appoint an examiner for the purpose of re-examination of the said answer script preferably within a period of four weeks from the date of communication of this order. We expect that such re-examiner would adhere to the instruction and follow any other guidelines that may be applicable in reviewing the said answer script. We expect that each of the answers would be properly evaluated and considered taking into consideration the standard which a student is expected to maintain at the Honours level.

30. It would be open for the re-examiner to award marks either by way of increase or decrease or without any change as the case may be but all that we expect is that there should be a proper assessment of answer script. We also make it clear that this judgment and order should not be treated as an expression of opinion with regard to the assessment of the answer script on merit since it is for the re-examiner to assess the merit of such script as an expert on the subject. We also expect the University to frame appropriate rules and guidelines in regard to review by taking into consideration the observation made by us in this judgment.

31. The Controller of Examinations is directed to communicate the result of such review to the writ petitioner as soon as the same is done and completed. In view thereof the order under appeal dated 12th April, 2011 is set aside. The appeal succeeds. The application being CAN 6926 of 2011 is disposed of without any order as to costs.

32. Affidavits filed in Court today be kept on record.

33. After examining the answer script the said answer scripts was returned to the learned advocate appearing on behalf of the University.

34. Urgent Xerox certified copy of this order, if applied for, be supplied to the learned advocates appearing for the parties on compliance of requisite formalities.

Tapan Kumar Dutt, J.

35. I agree.