

(2014) 02 CAL CK 0005

Calcutta High Court

Case No: M.A.T. No. 2653 of 2007

West Bengal Council of Higher
Secondary Education

APPELLANT

Vs

Madhurima Mukherjee

RESPONDENT

Date of Decision: Feb. 19, 2014

Acts Referred:

- Right to Information Act, 2005 - Section 22, 8, 8(1)(e)

Citation: (2014) 3 CHN 648 : (2015) 3 WBLR 591

Hon'ble Judges: Arun Mishra, C.J; Joymalya Bagchi, J

Bench: Division Bench

Advocate: Ranajit Chatterjee and Nilranjan Banerjee, Advocate for the Appellant

Judgement

Joymalya Bagchi, J.

The appellants Council has assailed the judgement and orders dated 29th August, 2007 and 31st August, 2007 whereby the appellant Council was directed to constitute three panels each constituting of three independent experts for examination of answer scripts of the respondent/writ petitioner in respect of questions in Physics, Chemistry and Mathematics papers respectively and submit a detailed report in the matter. The respondent/writ petitioner had challenged the marks awarded to her in Physics, Chemistry and Mathematics papers respectively claiming that improper assessment of her answer scripts were made.

2. Mr. Chatterjee, learned counsel appearing for the appellant Council submitted that there was no provision for review re-evaluation of answer scripts under the relevant rules. He further submitted that there was no material placed before the learned Single Judge that the assessment of answer scripts were defect, arbitrary or incomplete and the impugned order directing re-evaluation by an expert committee was illegal. In this connection he relied on Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth

and Others, , Arun D. Desai Vs. High Court of Bombay and Others, , The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das and Others, and Central Board of Secondary Education and Another Vs. Aditya Bandopadhyay and Others, .

3. Admittedly, the rules of the Council do not provide for re-evaluation/reassessment of answer scripts in connection with relevant examination.

4. In Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, the Apex Court held that it was the power of the Board to lay down rules for the purpose of evaluation of answer scripts in an examination.

The Apex Court held as follows :

"It was perfectly within the competence of the Board, rather it was its plain duty, to apply its mind and decide as a matter of policy relating to the conduct of the examination as to whether disclosure and inspection of the answer books should be allowed to the candidates, whether and to what extent verification of the result should be permitted after the results have already been announced and whether any right to claim revaluation of the answer books should be recognised or provided for. All these are matters which have an intimate nexus with the objects and purposes of enactment and are, therefore, within the ambit of the general power to make regulations conferred under sub-section (1) of section 36. In addition, these matters fall also within the scope of clauses (c), (f) and (g) of sub-section (2) of the said section."

5. In rebutting the argument of the applicability of the principles of "audi alteram partem" in the matter of evaluation of marks, the Apex Court further held as follows:

"The process of evaluation of answer papers or of subsequent verification of marks under Regulation 104(3) -does not attract the Principles of Natural Justice since no decision making process which brings about adverse civil consequences to the examinees is involved. The Principles of Natural Justice cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners. These principles involved in the audi alteram partem rule cannot be extended beyond reasonable and rational limits so as to make it applicable to the "twilight zone of mere expectations", however great they may be."

6. In Arun D. Desai Vs. High Court of Bombay and Others, the Apex Court held that the results having been published reevaluation of answer scripts can only be done if

it is shown that evaluation is defective, arbitrary or partial.

7. In [The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das and Others](#), the Apex Court reasserted the fact that the Court normally should not indulge in revaluation of answer scripts in the absence of specific provisions permitting the same. The Court also held that the onus lay upon the examinee that such an exceptional case has been made out.

The Apex Court held as follows :

"Finality has to be the result of public examination and, in the absence of statutory provision, the Court cannot direct reassessment/re-examination of answer scripts. The Courts normally should not direct the production of answer scripts to be inspected by the writ petitioners unless a case is made out to show that either some question has not been evaluated or that the evaluation has been done contrary to the norms fixed by the examining body. For example, in certain cases examining body can provide model answers to the questions. In such cases the examinees satisfy the Court that model answer is different from what has been adopted by the Board. Then only can the Court ask for the production of answer scripts to allow inspection of the answer scripts by the examinee, same should be a rarity and it can only be done in exceptional cases."

8. In [Central Board of Secondary Education and Another Vs. Aditya Bandopadhyay and Others](#), the Apex Court explained the ratio in Maharashtra State Board of Secondary Education (supra) in the light of the provisions of the Right to Information Act, 2005. The Apex Court held that the provisions of the said Act undoubtedly permitted inspection of the answer scripts but the provisions of the said statute did not extend to the grant of relief of re-evaluation of answer scripts unless the rules of the concerned Board permitted such a course. The Apex Court clarified the law as follows:

"Re-evaluation of answer books is not a relief available under the RTI Act. Therefore, the question whether re-evaluation should be permitted or not, does not arise. In the case of CBSE, the provisions barring re-evaluation and inspection contained in Bye-law 61."

"However, in view of section 22 RTI Act the provisions of the RTI Act will prevail over the provisions of the bye-law/rules of the examining bodies in regard to examinations. As a result, unless the examining body is able to demonstrate that the answer books fall under the exempted category of information described in section 8(1)(e), RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer books, even if such inspection or taking copies is barred under the rules/bye-laws of the examining body governing the examinations. Therefore, the decision in Maharashtra State Board case and the subsequent decisions following the same, will not affect or interfere with the right of the examinee seeking inspection of the answer books or

taking certified copies thereof."

9. Let us examine the factual matrix of the case in the light of the law as analyzed in the aforesaid decisions of the Supreme Court. Admittedly, there is no provision permitting re-evaluation/review of answer scripts. It was the onus of the respondent/writ petitioner to show that the answer scripts were examined in an arbitrary, defective or partial manner so as to fall within the species of "exceptional cases" to permit any relief in the matter of inspection/re-evaluation of answer scripts. Even the provisions of Right to Information Act do no enable an examinee to seek reevaluation of answer scripts, although inspection of the same may be availed of subject to the exception contained in section 8 of the said Act.

10. The order under challenge does not record even *prima facie* satisfaction that the respondent/writ petitioner had made out a case of defect, arbitrary, incomplete or partial examination of answer scripts. Furthermore, rules did not permit reevaluation of answer scripts.

11. In this backdrop, the impugned order directing re-evaluation of answer scripts by an expert body constituted in terms of the impugned order is liable to be set aside. Furthermore, the order under challenge was stayed and more than seven years have lapsed in the meantime. Nobody has appeared on behalf of the respondent/writ petitioner in support of the impugned order.

12. Apparently, the respondent/writ petitioner appears to have lost interest in the matter as the relief claimed may have been rendered infructuous due to lapse of time. Impugned order is set aside and the appeal is accordingly allowed. There, however, shall be no order as to costs.