

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of decision: 17<sup>th</sup> August, 2010.**

**+ W.P.(C) No.5556/2010**

**%**

**DIPEN SUNIL NAYAK (MINOR) THROUGH HIS  
FATHER SUNIL K NAYAK ..... PETITIONER**

Through: Mr. R.K. Saini, Advocate

Versus

**CENTRAL BOARD OF SECONDARY  
SCHOOL & ANR ..... RESPONDENTS**

Through: Ms. Manisha with Mr. Amit Bansal,  
Advocates

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. Whether reporters of Local papers may  
be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported  
in the Digest? No

**RAJIV SAHAI ENDLAW, J.**

1. The petitioner had appeared in the Class-XII Board examination held by the respondent Central Board of Secondary Education (CBSE). The petitioner has been declared as “fail” in the subject of Physics with only 33% marks therein. The respondent appeared in the supplementary examination in the subject of Physics and has been able to secure only 38 marks. This writ petition has been filed seeking mandamus to the respondent CBSE to produce the answer sheets of the petitioner in the subject of Physics in the main examination as well as supplementary examination to enable the petitioner to satisfy himself that the answer sheets which have

been marked are of the petitioner only and have not been mixed up with the answer sheets of any other student.

2. The counsel for the petitioner admits that the rules of the respondent CBSE do not permit the candidate to have physical examination of his answer sheet and only permit re-checking of marks and which has already been availed of by the petitioner without any success. The counsel for the petitioner however contends that there is no bar to this Court ordering the same. Attention in this regard is invited to the order dated 24<sup>th</sup> August, 1995 of the Division Bench of this Court in CW No.3065/1995 titled ***Naveen Kumar Vs. C.B.S.E.***, order dated 18<sup>th</sup> August, 1987 of Division Bench of this Court in C.W.P. No.2404/1987 titled ***Seema Tondan Vs. C.B.S.E.*** and order dated 26<sup>th</sup> July 2002 of a Single Judge in W.P.(C) No.4479/2002 titled ***Ankur Jain Vs. Central Board of Secondary Education*** and in each of which cases the respondent CBSE was directed to produce the answer book in the Court. The counsel for the petitioner who was a counsel in each of the cases also states that in each of the cases upon the petitioner being satisfied that the answer sheets marked were his answer sheets, the petitions were withdrawn.

3. Attention of the counsel for the petitioner has been drawn to the following judgments.

- (i). ***Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth*** AIR 1984 SC 1543 upholding the validity of the clause prohibiting disclosure and inspection of the answer books and as to their confidentiality and holding that it is not within the legitimate domain of the Court to determine whether the purpose of a statute can be served better by adopting any Policy different from what has been laid down by the legislature or its delegatee and refusing to strike down as unreasonable a Bye-Law merely on the ground that the Policy enunciated therein does not meet with the approval of the Court. The

argument of fair play requiring such disclosure was also rejected and it was held that if it is found that every possible precaution has been taken and all necessary safeguards provided to ensure that the answer books inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with and that the evaluation is done by the examiners applying uniform standards with checks and crosschecks at different stages and that measures for detection of malpractice, etc. have also been effectively adopted, it will not be correct on the part of the Courts to strike down the provision prohibiting re-evaluation on the ground that it violates the rules of fair play. Similarly, the argument of public interest was also not accepted;

- (ii). ***Parents Forum for Meaningful Education Vs. CBSE*** AIR 1994 Delhi 44 where the Division Bench of this Court laid down that the setting of the question papers in the examination and the evaluation of the answers is the prerogative of the examining body and it is not advisable for Court to interfere therein. The Supreme Court in SLP preferred by the CBSE against the said judgment, vide order dated 5<sup>th</sup> November, 1993 set aside the direction of the Division Bench of this Court to the CBSE to introduce the system of re-evaluation;
- (iii). Order dated 5<sup>th</sup> November, 1993 of the Supreme Court in SLP (C) No.17165/1993 titled ***CBSE Vs. Parents forum for Meaningful Education*** laying down that no direction can be given to the Board to introduce the system of re-evaluation;
- (iv). ***Parents Forum for Meaningful Education Vs. CBSE*** being C.W.P. No.1824/1997 decided on 19th December, 2001 where again the Division Bench of this Court held that this Court would not interfere with the policy decision taken by the State, far less in relation to the Education Policy which has been evolved by experts. It was however held that the question of re-evaluation and the right of the student to have a look at the answer sheets has been settled in previous litigations listed in the said judgment.
- (v). Order dated 8<sup>th</sup> July, 2002 of the Supreme Court in SLP (C) No.10128/2002 titled ***Parents Forum for***

***Meaningful Education Vs. CBSE*** dismissing the appeal against the order of the Division Bench aforesaid declining the grant of relief of re-evaluation.

- (vi). ***Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission*** AIR 2004 SC 4116 laying down that in the absence of any provisions in the rules for re-evaluation of the answer books, no candidate would have a right to seek re-evaluation of answer books;
- (vii). Judgment dated 6th August, 2004 of the Single Judge of this Court in W.P.(C) No.10374/2004 titled ***Nirbhesh Saxena Vs. CBSE*** & other writ petitions where inspite of numerous errors/irregularities having been cited, reliefs as in the present petition were still declined;
- (viii). Order dated 18th July, 2006 in W.P.(C) No.10984/2006 titled ***Akashsha Jain Vs. The Secretary, CBSE*** holding that in exercise of extraordinary power under Article 226 in certain given circumstances where ex facie fraud or large scale irregularity is made out, the Court may entertain petitions with a view to satisfy itself whether the results or the process in given cases has been done correctly but in the absence of any visible manageable standards it would be hazardous for the Court to indicate to the Board to put into place a mechanism of re-evaluation. The Court nevertheless did notice that denial of re-evaluation was harsh;
- (ix). ***The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das*** AIR 2007 SC 3098 laying down that direction to produce answer paper for inspection by examinee should not normally be passed;
- (x). Order dated 10th July, 2008 of this Court in W.P.(C) No.4645/2008 titled ***Rinith Anand Vs. CBSE***;
- (xi). Order dated 8th August, 2008 of this Court in LPA No.451/2008 titled ***Rinith Anand Vs. CBSE*** dismissing the appeal against the order of the Single Judge (supra) declining the grant of relief of re-evaluation;
- (xii). Order dated 1st October, 2008 of this Court in W.P.(C) No.5575/2008 titled ***Nishant Deengawal Vs. CBSE***;

(xiii). Order dated 25th May, 2010 of the Supreme Court in ***H.P. Public Service Commission Vs. Mukesh Thakur*** laying down that it is not permissible for High Court to examine the question paper and answer sheets itself and reiterating the view in the judgments aforesaid of the Apex Court.

(xiv). Order dated 9th June, 2010 of this Court in W.P.(C) No.4034/2010 titled ***Rao Siddhant Yadav Vs. CBSE***; All to the same effect.

4. In comparison, the orders relied on by the counsel for petitioner are interim orders and which are not adjudication on the rights of the candidate to have the answer sheets so produced in the Court and to examine the same. Of course the Court has the power to, in appropriate circumstances call for the answer sheets. However for that a case has to be made out. The only case made out in the present is that the petitioner has been a very good student throughout and is hence shocked having failed in the subject of Physics. It is also contended that the petitioner has obtained 28 marks out of 30 in the Practical Examination in Physics and it is just not possible that the petitioner has secured only 5 out of 70 marks in the theory examination in the final examination and only 10 out of 70 marks in the supplementary examination in the said subject. Yet another circumstance which is being cited is that when the result was first published on the website, the marks shown against the roll number of the petitioner were different from the final result.

5. According to the petitioner when the result was first uploaded on the website of the respondent CBSE, his marks were shown as under:-

| <b><u>Subject</u></b> | <b><u>Marks</u></b> |
|-----------------------|---------------------|
| Functional English    | 85%                 |
| Mathematics           | 84%                 |
| Physics               | 80%                 |
| Chemistry             | 71%                 |
| Computer Science      | 91%”                |

6. According to the petitioner there was a correction in the website within a few hours and the marks finally attributed were as under:

| <b><u>“Subject</u></b> | <b><u>Marks</u></b> |
|------------------------|---------------------|
| Functional English     | 78%                 |
| Mathematics            | 35%                 |
| Physics                | 33% (FT)            |
| Chemistry              | 61%                 |
| Computer Science       | 68%”                |

7. As far as the said suspicious circumstance is concerned, the petitioner did not pursue the same. In the present writ petition also, grievance only with respect to Physics subject is made. The petitioner has accepted the mistake, even if any, in uploading his marks and cannot now raise the same as a suspicious circumstance.

8. In so far as the other ground of the petitioner having been a bright student and therefore it being unbelievable that he has failed in Physics is concerned, the same is not borne out of the result of the petitioner. The petitioner has secured only 35 marks in Mathematics and not very high marks in the other subjects and with distinction only in Functional English. The result of the petitioner in the subject of Physics cannot be said to be in mismatch with his result in other subjects.

9. Similarly, the other argument given of it being impossible that the petitioner secured only 5 or 10 marks out of 70 in theory also does not shock the conscience of this Court so as to go against the grain of the aforesaid judgments and call for the answer sheets in contravention of the Rules on the basis whereof the petitioner had appeared in the examination. It is quite possible that a student who has secured only 35% marks in Mathematics and 61% and 68% marks respectively in Chemistry and Computer Science may have also secured only 5 and 10 marks in the theory paper of Physics. The Supreme Court in *Union of India Vs. Mohan Lal Capoor* AIR 1974 SC 87

held that “it is not expedient to extend the horizon of natural justice in the *audi alteram partem* rule to the twilight zone of mere expectations, however great they might be.”

The writ petition is therefore dismissed *in limine*. No order as to costs.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**17<sup>th</sup> AUGUST, 2010**  
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