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

+ W.P.(C) 7599/2015

RAJESH DHINGRA

..... Petitioner

Through: Mr Shafiq Khan & Mr Tanveer Khaleeq,
Advs.

versus

**CENTRAL BOARD OF SECONDARY
EDUCATION AND ANR.**

..... Respondents

Through: Mr Amit Bansal, Ms Seema Rao & Mr
Akhil Kulshrestha, Advs. for R-1.

Mr Ajay Digpaul, CGSC with Ms Medha ARya &
Mr Paritosh Anil, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

08.09.2015

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1. This is a writ petition, in which, the principal prayer is made, with respect to notification dated 26.05.2015, issued by respondent no.1 i.e. the CBSE. The petitioner seeks a writ and/or any other appropriate order or direction of this court to quash the notification dated 26.05.2015. Connected to this principal prayer, are supplementary prayers whereby, re-evaluation of question nos. 2, 4, 5, 7, 8, 9, 10, 13, 14, 17, 18 & 22 is sought qua the Business Studies (theory) paper, pertaining to the son of the petitioner i.e. Mr Priyank Dhingra. Furthermore, a prayer is also made that the benefit of 'scaling of marks' should also be extended to the petitioner's son. A direction is also sought qua respondent no.1, to the effect, that it should, preserve the original answer sheet of the Business Studies (Theory) paper pertaining to Mr. Priyank Dhingra.

2. The brief facts, which obtain in the present case, and have led to the filing of the present petition, are as follows:

2.1 The petitioner's son, Mr Priyank Dhingra, took his class XII examination; the result with respect to which was declared by respondent no.1 on 25.05.2015. The impugned notification thereafter got issued on 26.05.2015.

2.2 To be noted, prior to the issuance of the impugned notification dated 26.05.2015, a notification was issued by respondent no.1 whereby, amendments/ additions were made to the examination bye-laws. This notification is dated : 11.03.2015. The notification dated 11.03.2015 allows the examinee to seek re-evaluation of Senior School Certificate (Class XII) exams in the "manner" as prescribed by respondent no.1 from time to time.

2.3 It is in the background of these notifications, that the petitioner, filed an application on 27.05.2015 to seek verification/ re-totalling of the marks pertaining to the Business Studies (Theory) paper. Evidently, in the verification i.e. totalling of marks, no mistake was found; a fact which was communicated to the petitioner by respondent no.1, on 03.06.2015.

2.4 Immediately thereafter, on 12.06.2015, the petitioner filed an application to obtain a photocopy of the answer sheet pertaining to the Business Studies (Theory) paper. The answer sheet was also downloaded by the petitioner, on 17.06.2015.

2.5 Consequent thereto, on 19.06.2015, the petitioner made an application to the Chairman, Regional Director and the Controller of Examination (CBSE) for re-evaluation of the answer sheet. This was apparently an on-line application. It appears, a second application was made with respect to the re-evaluation, on 23.06.2015. The second application, I am told, was an

off-line application.

2.6 As requested, re-evaluation was conducted and, the result of re-evaluation was declared by the respondent on 26.06.2015. The petitioner was issued a revised mark-sheet on 30.06.2015. Consequent to the revision in the mark-sheet, the marks allotted to the petitioner's son i.e. Mr Priyank Dhingra, concerning the Business Studies (theory) Paper A, were enhanced from 49 to 71. The consequent effect of which, was that, the total marks accorded to Mr Priyank Dhingra, in the subject Business Studies, which included theory as well as well as the practical portion, increased from 69% to 91%.

2.7 The petitioner's request for re-evaluating the questions beyond the limit of ten (10) questions, provided in the impugned notification, which was made in the letter dated 19.06.2015, addressed to the Regional Director of respondent no.1, was rejected on 02.07.2015.

2.8 Consequently, vide a letter of even date i.e. 02.07.2015, the petitioner lodged a complaint with the Chairperson of respondent no.1. It was sought to be articulated in the application that, negligence had occurred, on the part of the examiner, and hence re-evaluation should be ordered in respect of additional twelve (12) questions as well; the details qua which are provided hereinabove.

2.9 The aforesaid letter was followed by yet another communication dated 03.07.2015, whereby the petitioner sought preservation of the original answer sheet pertaining to Business Studies (theory) paper.

3. Evidently, since no relief was forth coming, the instant writ petition was filed by the petitioner under Article 226 of the Constitution.

3.1 Notice in this petition was issued on 12.08.2015. By the same order,

my predecessor made prima facie observations broadly to the effect that once, by a given method of evaluation (as prescribed by respondent no.1), it came to fore that the initial evaluation was ‘faulty’ then, the re-evaluation could not be limited to ten (10) questions, as was provided in the impugned notification.

3.2 These observations were replicated by my predecessor in his order dated 25.08.2015; at which point the counsel for respondent no.1 cited a judgement dated 25.03.2015, passed by a Single Judge of this court, in WP(C) No. 4561/2014, titled: ***Harsh Bhushan vs Chairman, Central Board of Secondary Education and Ors.*** The judgment in ***Harsh Bhushan***’s case was cited to contend that in respect of a pari materia notification dated 29.05.2014, the court had repelled the challenge.

3.3 To be noted, since then, pleadings in the matter have been completed.

4. The facts set out above are not in dispute. What is really in dispute is, as to whether the petitioner has any right to seek re-evaluation of questions to an extent larger in number than those prescribed in the impugned notification. Concededly, in the impugned notification the right of re-evaluation is restricted to ten (10) questions. It is also not in dispute that, in the notification dealing with amendment to the bye-laws, which as noted above is dated 11.03.2015, there is no such limitation; though, it must be stated that the said notification does state that the candidate’s may apply for re-evaluation in the “manner” as prescribed by respondent no.1 from time to time. The relevant part of notification dated 11.03.2015 reads as follows:

“... For Senior School Certificate (Class XII) Examination, a candidate may also apply for re-evaluation in the manner as prescribed by the Board from time to time. However for Secondary School (Class X) Examination conducted by the

Board no candidate shall claim, or be entitled to, revaluation of his/her answer book(s)....”

(emphasis is mine)

5. Mr Bansal, learned counsel for respondent no.1, has fairly conceded that notification dated 11.03.2015 was subject matter of a decision rendered by this court, dated 06.07.2015, passed in WP(C) No. 6170/2015, titled: ***Samarth Mittal vs Union of India & Ors.***

5.1 In the said writ petition, another Single Judge of this Court, who was incidentally dealing with the captioned matter at the initial stages, and has passed orders, to which I have made a reference, i.e. 12.08.2015 and 25.08.2015, has taken a view that bye-laws cannot be curtailed by a circular.

5.2 In effect, the issue which arose in the ***Samarth Mittal's*** case was : as to whether the re-evaluation could be restricted to certain limited number of subjects only. The court came to the conclusion that, it could not be done, broadly on the ground that such a restriction on the right of re-evaluation conferred by the bye-laws could not be provided by way of a circular.

5.3 I am informed that respondent no.1 has carried the matter in appeal and that the appeal is pending deliberation of the Division Bench.

6. In so far as the order in the case of ***Harsh Bhushan*** is concerned, it dealt with a notification dated 29.05.2014, which, incidentally, also dealt with restriction on the number of questions, qua which, a candidate could seek re-evaluation. A perusal of the order dated 25.03.2015, rendered in ***Harsh Bhushan's*** case, would show that the notification dated 29.05.2014, which was under consideration in that case, which permitted re-evaluation of only ten (10) questions, was sustained by the learned Single Judge.

7. There are, therefore, in effect, two different views; one taken in

Samarth Mittal's case and another taken in *Harsh Bhushan's* case. In the *Samarth Mittal's* case, a larger question has been decided, which is, that the circular cannot override the bye-laws. It is not disputed by Mr Bansal that the impugned notification, which is, dated 26.05.2015, is issued by respondent no.1 in exercise of its administrative powers.

7.1 The notification pertaining to amendment of bye-laws, which is dated 11.03.2015, has been issued in exercise of powers conferred on respondent no.1 under clause 18 of the Government Resolution dated 10.07.1929. The bye-laws, therefore, in one sense, have a statutory flavour. Having regard to this fact, I am in agreement with the view taken by the learned Single Judge in the case of *Samarth Mittal* that the preservation of the power to prosecute the manner in which re-evaluation has to take place cannot be used in such a fashion so as to curtail the very right of re-evaluation conferred under the notification dated 11.03.2015. The discussion with respect to this aspect of the matter is contained in paragraph 7 and 8 of the judgement in *Samarth Mittal's* case.

8. Apart from the above, I am of the view that once the re-evaluation process led to the conclusion that the evaluation by the examiner was clearly suspect, to restrict thereafter, the re-evaluation exercise for a given paper to a maximum of ten (10) questions, would be clearly a travesty of justice and will suffer from vice of irrationality. My reason for coming to this conclusion is this: the entire purpose of re-evaluation is to rule-out cases of gross negligence, if any, committed by the examiner.

8.1 In this case, as is evident, out of 25 questions, set out, in the Business Studies (theory) paper, ten (10) questions have been found to have been incorrectly evaluated, which in percentage terms would mean that 40% of

question were wrongly evaluated. Having been apprised of such egregious negligence and / or error, to then, restrict the evaluation to only ten (10) questions would actually lead to an incongruous result, which is that, despite, the examiner having defaulted, the examinee will not be given the right to seek re-evaluation of other questions qua which he has a serious doubt. Nothing to my mind, would be more irrational and absurd. That irrationality is a ground available to a writ court for striking down an administrative action is exemplified in the judgment of the Supreme Court, passed in *State of NCT of Delhi and Anr. Vs. Sanjeev Alias Bittoo, (2005) 5 SCC 181*. The observations made in paragraphs 16, 17, 20 and 21 at pages 191-194, being apposite are extracted hereinafter :-

“..16. The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those classes of cases which relate to deployment of troupes, entering into international treaties, etc. The distinctive features of some of these recent cases signify the willingness of the Courts to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is ‘illegality’ the second ‘irrationality’, and the third ‘procedural impropriety’. These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service, [1984] 3 All. ER. 935, (commonly known as CCSU Case).

17. The Court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

20. The principles of judicial review of administrative action were further summarized in 1985 by Lord Diplock in CCSU case as illegality, procedural impropriety and irrationality. He said more

grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows:

"....Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community. Lord Diplock explained 'irrationality' as follows:

"By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is to outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

21. In other words, to characterize a decision of the administrator as 'irrational' the Court has to hold, on material, that it is a decision 'so outrageous' as to be in total defiance of logic or moral standards..."

(emphasis is mine)

8.2. I am, therefore, of the view that the impugned notification is unconstitutional and is violative of Article 14 of the Constitution to the extent it limits the re-evaluation process to a maximum of ten (10) questions qua a particular paper.

8.3 While administrative difficulties of respondent no.1 can be understood, they cannot be at the cost of the future of a candidate. This is so, as in the present case, where re-evaluation has led to the conclusion that the examiner had committed gross negligence and / or error in the evaluatory process.

9. Accordingly, the impugned notification dated 26.05.2015 is quashed, to the extent it limits the evaluatory process to ten (10) questions.

9.1 The consequent result would be that other prayer, the prayer pertaining to re-evaluation of twelve (12) questions, would have to be granted. It is ordered accordingly. With regard to the 'scaling up' of marks of Mr Priyank Dhingra, respondent no.1 is directed to act according to its extant policy framed in that behalf. If the policy applies to Mr Priyank Dhingra, then he would be given the benefit of the same.

10. That brings me to the last part, which is, about preservation of the answer sheet. Mr Bansal informs me that the answer sheet is available. Therefore, it is directed that, till the evaluatory process is completed, the answer sheet would be preserved.

11. Needless to say, respondent no.1 will act with due expedition and comply with the directions as issued hereinabove as soon as possible, though not later than two (2) weeks from today. The writ petition is disposed of with the aforesaid directions.

12. Dasti.

RAJIV SHAKDHER, J

SEPTEMBER 08, 2015/kk