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

+ W.P.(C) 3865/2017 & CM No.16979/2017

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Reserved on : 4th May, 2017
Date of decision : 6th July, 2017

RAVI CHANDRA PRAKASH Petitioner

Through: Mr. Shishir Pinaki,
Mr. Mukesh Kr. Singh,
Ms. Sushma Singh and
Mr. Rajiv Sinha, Advs.

versus

SUPREME COURT OF INDIA AND ANR. ... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. ANU MALHOTRA

JUDGMENT

GITA MITTAL, ACTING CHIEF JUSTICE

1. The present writ petition has been filed by the writ petitioner contending that in exercise of powers conferred by sub-rule(i) of Rule 5 of Order IV of the Supreme Court Rules, 2013, the Supreme Court has framed regulations for conducting the examination for being placed as Advocate on Record ("AOR" hereafter). It is contended that these regulations do not contain any provision for rectifying errors, if any, occurring after evaluation of the answer sheets by examiners; that they do not provide for any standard method for evaluation of the answer sheets as is followed in

various national and state level examinations (for instance, examinations conducted by the Union Public Service Commission or State Public Service Commission) and as such they are arbitrary, unjust, unfair, unreasonable, inequitable and violative of Articles 14 of the Constitution of India. It is further contended that with regard to the AOR Examination, 2016 in which the petitioner participated, the respondents were required to get re-evaluated the answer sheets of Paper-I (Practice & Procedure of the Supreme Court) as well as Paper-III (Advocacy & Professional Ethics) by a Senior Advocate who was not an evaluator of the AOR Examination, 2016.

2. Premised on the above, the writ petitioner makes the following prayers in the writ petition :

“a. Issue a writ, order or direction in the nature of mandamus declaring Regulation 12 of the Regulations Regarding Advocates-on-Record Examination , 2013 which bars re-evaluation of answer sheets as arbitrary, unjust, unfair, unreasonable, inequitable and violative of Articles 14.

b. Issue a writ, order or direction in the nature of mandamus declaring Regulation 12 of the Regulations Regarding Advocates-on-Record Examination , 2013 be so read as to enable re-evaluation of answer sheets by an expert or body of expert who was not a member of the Board of Examiners in the year of conduct of the examination.

c. Issue a writ, order or direction in the nature of mandamus declaring Regulation 11(iv) of the Regulations Regarding Advocates-on-Record Examination , 2013 which bars a candidate from availing more than 5 chances at the AOR Examination as arbitrary, unjust, unfair, unreasonable, inequitable and violative of Articles 14;

- d. *Issue a writ, order or direction in the nature of mandamus declaring Regulation 11(iv) of the Regulations Regarding Advocates-on-Record Examination , 2013 which equates appearance in any one of the papers of the AOR examination for a candidate who comes within Regulation 11(i) or Regulation (ii) as a chance as arbitrary, unjust, unfair, unreasonable, inequitable and violative of Articles 14;*
- e. *Issue a writ, order or direction in the nature of mandamus declaring Regulation 11(iv) of the Regulations Regarding Advocates-on-Record Examination , 2013 be so read as to exclude appearance in any one of the papers of the AOR examination for a candidate who comes within Regulation 11(i) or Regulation 11(ii) as a chance;*
- f. *Issuance of appropriate writ/direction/orders on the Respondents to reevaluate the Petitioner's AOR Exam 2016 answer sheets of Paper I (Supreme Court Practice and Procedure) and Paper III (Professional Ethics) by a Senior Advocate who was not an evaluator in the AOR Examination 2016, in light of the apparent faulty evaluation by the Examiners of the said papers;*
- g. *Issuance of appropriate writ/direction/orders on the Respondents declaring that the Petitioner as having availed of only 3 out of 5 chances in the AOR Examination treating his appearance in only one paper in the AOR Examination 2011 in terms of Regulation 11(i) and in the AOR Examination 2017 in terms of Regulation 11(ii) as not a chance/attempt but merging with the AOR Examination 2010 and 2016 respectively;*
- h. *Issue a writ, order or direction in the nature of mandamus directing Respondent no.1 to incorporate in the Regulations Regarding Advocates-on-Record Examination, 2013 a minimum objective standard to be adopted during evaluation of the answer scripts, standard guidelines as to how the answer sheets of AOR examination are be checked, the manner of checking and how to award marks, a specific time frame for evaluation and declaration of results so as to provide the candidate a*

reasonable time to avail of re-evaluation of the answer sheets as is followed by the various other national and regional examination bodies (viz. UPSC, other State PSCs etc.);

i. Pass any such further and other orders as this Hon'ble Court so direct in the interest of justice."

3. So far as the factual matrix giving rise to the present writ petition is concerned, the same is within a narrow compass. To the extent necessary, we note the same hereafter.

4. The petitioner has claimed that he is a practicing advocate who has put in 12 years of practice in the courts in Delhi and the National Capital Region as well as *quasi judicial fora*. The petitioner has claimed that he has assisted in cases as well as practiced as before the Supreme Court of India as well as the High Court in several matters of public importance.

5. The power of the Supreme Court of India to frame regulations regarding its business is conferred under Article 145 of the Constitution of India which reads as follows :

"145. Rules of Court, etc

(1) Subject to the provisions of any law made by Parliament the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including

(a) rules as to the persons practising before the Court,

(b) rules as to the procedure for hearing appeals, and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

(c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;

(cc) rules as to the proceedings in the Court under Article 139A;

(d) rules as to the entertainment of appeals under sub clause (c) of clause (1) of Article 134;
(e) any judgment pronounced or order made by the Court may be received and rules as to the conditions the procedure for such review including the time within which applications to the Court for such review are to be entered;
(f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceeding therein;
(g) rules as to the granting of bail;
(h) rules as to stay of proceedings;
(i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;
(j) rules as to the procedure for inquiries referred to in clause (1) of Article 317

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under Article 143 shall be five: Provided that, where the Court hearing an appeal under any of the provisions of this chapter other than Article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question

and shall on receipt of the opinion dispose of the appeal in conformity with such opinion

(4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under Article 143 save in accordance with an opinion also delivered in open Court

(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.”

(Emphasis by us)

6. In exercise of the power conferred under Article 145, it is pointed out that in the year 1961, the Supreme Court of India had notified Rules titled “**Supreme Court Rules, 1961**” which were to govern the Examination for Advocates-on-Record. These Rules were amended in the year 2013 when the **Supreme Court Rules, 2013** (hereinafter referred to as the “Rules”) came to be notified. We extract the provisions of Order I Rules 2(1)(a); 2(1)(b) and Order IV Rule (b) thereof which read thus :

“Order I

INTERPRETATION

(2) xxx xxx xxx

2(1) xxx xxx xxx

(a) 'advocate' means a person whose name is entered on the roll of advocates prepared and maintained by a State Bar Council under the Advocates Act, 1961 (25 of 1961);

(b) 'advocate-on-record' means an advocate who is entitled under these rules to act as well as to plead for a

party in the Court;

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Order IV
ADVOCATES

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(b) No advocate other than the Advocate-on-record for a party shall appear, plead and address the Court in a matter unless he is instructed by the advocate-on-record or permitted by the Court.

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5. No advocate shall be qualified to be registered as an advocate-on-record unless :-

(i) his name is, and has been borne on the roll of any State Bar Council for a period of not less than four years on the date of commencement of his training as provided hereinafter; Provided however, if any candidate has earlier appeared in any of the Advocates-on-Record Examination he shall continue to be so eligible to sit in any subsequent examination;

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7. It is also noteworthy to note the regulations regarding the AOR examination framed in exercise of powers conferred by sub-rule(1) of Rule 5 of Order IV of the Supreme Court Rules, 2013 which are titled “**The Regulation Regarding AOR Examination**”.

The relevant sub-rules thereof are extracted below :

“(1) The examination shall be held under the general supervision of a Committee of three Judges of the Court to be appointed by the Chief Justice of India and to be designated as the Examination Committee; unless otherwise specifically ordered by the said Committee the examination will be held twice a year preferably in May and December.

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(3) The examination shall be conducted by a Board of

Examiners to be nominated by the Committee, of which Board the Registrar of the Court will be ex officio Secretary.

(4)(a) The examination shall be held in the following subjects:

Syllabus (I) Practice & Procedure of the Supreme Court. (II) Drafting in two parts (III) Advocacy & Professional Ethics (IV) Leading Cases (i) Relevant provisions in the Constitution of India relating to the jurisdiction of the Court. (ii) Supreme Court Rules and relevant provisions of Civil Procedure Code, Limitation Act and the General Principles of Court Fees Act. (i) Petitions for special leave and statements of cases etc. (ii) Decrees & Orders and Writs etc. A list of leading cases shall be made available to the candidates at the time of notification of the Advocates on-Record Examination.

*(b) The Committee, on recommendation of the Board of Examiners, shall **prescribe the books for study** for Papers I to III and leading cases for Paper IV, which will remain in force, until they are revised or modified.*

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*(5)(a) **Each paper shall carry 100 marks and in order to pass the examination a candidate must obtain a minimum of 50 per cent of the marks in each paper and 60 percent in the aggregate.***

(b) If the Committee on the recommendation of the Board of Examiners is of the opinion that a candidate has not sufficiently prepared himself for the examination they may prescribe a time within which he shall not present himself again for examination.

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*(9) The Board of Examiners shall at the conclusion of the examination and **after scrutiny of the answer papers submit the results** along with the answer papers for **approval** to the Committee and the Committee may in its discretion, moderate the said results in any manner it thinks fit.*

(10) As soon as the Committee has scrutinized the

results and approved the same the Secretary of the Board shall notify the results on the Court's Notice Board. Every candidate who is declared to have passed the said Examination shall be given a certificate to that effect under the hand of the Secretary.

(11)(i) A candidate, who fails to obtain 50 per cent in one paper only but obtains 40 per cent in that paper and also obtains 60 per cent in the aggregate in the remaining papers, shall be allowed to appear in that paper at anyone subsequent examination on payment of the full examination fee and he shall be declared to have passed the Advocates on-Record Examination if he obtains 50 per cent marks in the paper in which he has so reappeared and the marks so obtained in the paper he has reappeared taken with the marks obtained in the remaining papers at the earlier examination are 60 per cent of the aggregate marks in all the papers.

(ii) A candidate who passes in all the papers at any single examination but fails to obtain 60 percent of the marks in the aggregate may, on payment of the full examination fee, appear at anyone subsequent examination in one of the papers only and shall be declared to have passed the Advocates-on-record Examination if the marks obtained by him in the subsequent examination taken with the marks obtained in the remaining papers at the earlier examination are 60 percent of the aggregate marks in all the papers. The option will have to be exercised by the candidate at the time of filing of proforma application for appearing in the subsequent examination and the option once exercised shall be binding on the candidate -.

(iii) A candidate shall not be allowed more than five chances at the examination. Appearance even in anyone of the papers in an examination shall be deemed to be a chance.

(12) No application for re-evaluation of answer sheets shall be entertained."

(Emphasis by us)

8. The petitioner contends that he obtained his LL.B. Degree from Jamia Milia Islamia University, New Delhi. The petitioner has further asserted that in 2010, as he fulfilled the eligibility criteria for taking the AOR examination under the aforesaid regulations, he applied and undertook the examination for the first time. In his first attempt, the petitioner secured an aggregate of 60% marks in three of the papers i.e. Papers – I, III & IV. However, in Paper – II (Drafting), the petitioner was able to secure only 40% marks. Consequently, in view of the Regulation 11(i) of the Regulations governing the AOR Examination, the petitioner was required to appear in Paper – II in any one subsequent examination. The petitioner would be declared to have passed the AOR Examination only if the marks obtained by the petitioner in such paper in the subsequent examination, taken together with the marks obtained in the remaining papers at the earlier examination, were 60% of the aggregate marks in all the papers.

9. It is submitted by the petitioner that, in order to obtain such aggregate of 60% in the subsequent examination, he needed to secure only 57.5 marks in the Paper – II of the AOR Examination held in June, 2011. Unfortunately, the petitioner was able to secure only 45 marks in the Paper – II (Drafting) which led to his non-selection as an advocate on record.

10. The petitioner filed an application dated 16th December, 2011 under the Right to Information Act, 2005 with the Public Information Officer (PIO) of the Supreme Court of India seeking a

copy of his answer sheets in Paper – II (Drafting) which was received by him on the 16th of January 2012 under cover of a letter dated 13th January, 2012.

The petitioner has placed before us a copy of this answer sheet.

11. In the writ petition, the petitioner has tried to urge that he has not been given sufficient marks and that his answers in few questions were not properly evaluated. It is pointed out that the petitioner also made representations dated 18th January, 2012 and 10th February, 2012 to the Advocates on Record Examination Committee to this effect. The representations were rejected. The petitioner accepted rejection of his representations and this matter was not taken any further.

12. The dates on which the petitioner appeared in the examinations thereafter is not mentioned in the writ petition. However, the petitioner has stated that he “*reposed faith in the fairness of Committee*” and participated “*in the subsequent examinations in all the four papers*” but did not qualify the AOR Examination due to the fact that he could not obtain 60% aggregate marks each time. It is submitted that “*on each subsequent occasion*”, the petitioner received less marks in one or the other subject resulting in his disqualification.

The petitioner has stated that in this manner, he unsuccessfully participated in the AOR Examinations held in 2010, 2011, 2012 and 2013.

13. The petitioner further submits that to buttress his

preparations, the petitioner took a two year break and rigorously prepared for the AOR Examination, 2016 which was held between 6th June, 2016 and 9th June, 2016. The significance of this attempt was that, in terms of Regulation 11(iv) of the Advocate on Record Regulations, the attempt in 2016 was the fifth and therefore, the last attempt available to the petitioner for becoming an AOR.

14. Unfortunately, the petitioner was unable to secure the prescribed benchmark in the AOR Examination, 2016 and was declared unsuccessful upon evaluation which result was published in February, 2017. In this attempt, it appears that the petitioner secured 228.5 aggregate marks out of 400 marks in all the papers. As per the break up, he had secured 52.5 marks in Paper – I; 66 marks in Paper – II; 50 marks in Paper – III and 60 marks in Paper – IV and therefore, needed 11.5 marks to obtain 240 marks (which form the 60% marks in aggregate). Therefore, in order to reach the 60% benchmark of 240 marks, the petitioner was falling short by 11.5 marks. The more serious consequence which has resulted to the petitioner is that this result has effectively closed all possibilities of the petitioner to become an advocate on record.

15. It is contended that the petitioner filed an application dated 14th February, 2017 under the Right to Information Act, 2005 seeking a copy of his answer sheets in the AOR Examination, 2016 which was supplied to him on the 2nd of March 2017.

16. Before us, it is contended that in Paper – I (Supreme Court Practice and Procedure), the petitioner has been awarded only 52.5 marks. The submission of the writ petitioner is that, considering

the petitioner needed only 11.5 marks more, the evaluation of his answer sheets was not effectively undertaken. It is further contended that in Paper – III (Legal Ethics), the petitioner was awarded only 50 marks even though, he answered all answers with clarity, brevity and with reference to case law. It is contended that unwarranted credit has been given to spelling or grammatical mistakes without taking notice of the conceptual responses and case law analysis presented by the petitioner. In support of these submissions, the petitioner has submitted that he has got an unbiased and objective assessment of his answer sheets by Senior Advocates, practicing before the Supreme Court of India, undertaken and that they were of the opinion that the petitioner deserved to be awarded much higher marks in these papers and ought to have been granted more than the 11.5 marks which he needed to qualify the examination.

17. Armed with such opinion, in the writ petition, the petitioner submits that he made a representation dated 3rd March 2017 to the Advocates on Record Examination Committee requesting re-evaluation of his answer sheets in Paper – I (Supreme Court Practice and Procedure) and Paper – III (Legal Ethics) by a body of experts who were not examiners in the AOR Examination, 2016 so that justice may be done to him. The petitioner also requested that the Committee adopted a lenient view and granted 11.5 marks to enable him to qualify the examination, as it was his last attempt.

18. This representation was rejected by the Committee which rejection was communicated vide letter dated 30th March, 2017.

The petitioner contends that the rejection was without assigning any reasons.

19. Aggrieved by the rejection of his representation, the petitioner has filed the present writ petition challenging the outcome of the AOR Examination, 2016 and also the said Regulations for holding AOR Examinations. Apart from the grievance that the regulations are arbitrary, the petitioner has complained that the method of evaluation of the answer sheets followed by the Advocates on Record Examination Committee was inherently arbitrary, opaque, non-transparent and that a purely subjective method stands adopted which is imminently susceptible to bias. The submission also is that the evaluation of answer sheets is not by any experts in the fields but is by practicing advocates who are not trained in the business of evaluation of answer sheets and would not have expertise of awarding marks etc. It is submitted that sub-regulations (ii), (iii) and (iv) of the Regulation 11 of the Regulations regarding AOR Examination have to be read *ejusdem generis*; that there is no *intelligible* basis for permitting only five chances in the examination. The contention is that in any case, in all his attempts, the petitioner cleared at least three papers, failing only in one paper. The submission is that for this reason, the prohibition contained in Regulation 11(iv) restricting available opportunity to five chances for clearing the examination was not applicable to the petitioner.

20. So far as the challenge by the petitioner being belated is concerned, it is submitted by ld. counsel for the petitioner that the

cause of action for laying the challenge has arisen only now inasmuch as the petitioner stands precluded from appearing in any further examination only on account of his having been unsuccessful in his fifth attempt in AOR Examination, 2016.

21. Given the submission that the petitioner's rights under Articles 19(i)(g) and 21 of the Constitution of India regarding the right to profess and practice his profession in the Supreme Court of India stands interdicted and the petitioner's right under Rule 2(i)(b) of the Supreme Court Rules, 2013 taken away, we have heard Mr. Shishir Pinaki, Id. counsel for the petitioner at great length. We have also perused the writ petition and scrutinized the answer sheets as were placed by Id. counsel for the petitioner before us.

22. Having given our considered thought to the submissions made before us, unfortunately, we are unable to agree with Id. counsel for the petitioner.

23. The petitioner has participated in five examinations conducted by the Supreme Court of India from 2010 till 2016. The petitioner is a qualified and experienced advocate who has put in over twelve years of legal practice and was fully aware of the Regulations regarding the AOR Examination. When he applied for and participated in the selection process, the petitioner was therefore, fully aware of the manner in which the said examination is conducted; the constitution of the Advocates on Record Examination Committee; the qualifications, expertise and abilities of the examiners as also the prohibition contained in Regulation 11 of the Regulations regarding AOR Examinations. He did not

object to the same when he applied for the examination in 2010. Accepting the validity thereof, the petitioner undertook the re-examination for Paper – II (Drafting) in 2011 for the reason that he had secured insufficient marks therein which disabled him from meeting the prescribed benchmark of 60% aggregate marks. The petitioner's representations in respect of the examination were rejected by the respondents, which rejection he accepted. Under the same Regulations, the petitioner thereafter undertook the examination in the years 2012, 2013 and 2016. These examinations were conducted under the same Regulations. We have extracted above the regulations regarding the AOR Examination.

24. Regulation 12 of the Regulations unequivocally declared that no re-evaluation shall be entertained. The petitioner accepted all stipulations made in the Regulations and participated in the examination. Clearly, the petitioner has filed the present writ petition after having consciously participated in the examination process and having failed to clear the same.

25. Clearly, the petitioner is a candidate who has participated in the selection process and failed to succeed. He seeks to challenge the regulations prescribing the method of selection. It is trite that a candidate would stand estopped from challenging the selection process as well as examination after having participated therein. In this regard, we may usefully refer the observations made by the Supreme Court in its three Judge Bench pronouncement reported at ***1986 Supp SCC 285, Om Prakash Shukla v. Akhilesh Kumar***

Shukla & Ors. wherein it was held as follows :

“24. Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the district of Kanpur also. They were not responsible for the conduct of the examination.”

26. We may also usefully refer the observations made by the Supreme Court in its Division Bench pronouncement reported at **(2016) 1 SCC 454, Madras Institute of Development Studies & Ors. v. K. Sivasubramaniyan & Ors.** wherein it was held as follows :

“14. The question as to whether a person who consciously takes part in the process of selection can turn around and question the method of selection is no longer res integra.

15. In G. Sarana v. University of Lucknow [(1976) 3 SCC 585 : 1976 SCC (L&S) 474] , a similar question came up for consideration before a three-Judge Bench of this Court where the fact was that the petitioner had applied to the post of Professor of Anthropology in the University of Lucknow. After having appeared before the Selection Committee but on his failure to get appointed, the petitioner rushed to the High Court pleading bias against him of the three experts in the Selection Committee consisting of five members. He also alleged doubt in the constitution of the Committee. Rejecting the contention, the Court held: (SCC p. 591, para 15)

“15. We do not, however, consider it necessary in the present case to go into the question of the

reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee. This view gains strength from a decision of this Court in Manak Lal case [Manak Lal v. Prem Chand Singhvi, AIR 1957 SC 425] where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting: (AIR p. 432, para 9)

‘9. ... It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.’”

16. In Madan Lal v. State of J&K [(1995) 3 SCC 486 : 1995 SCC (L&S) 712 : (1995) 29 ATC 603] , similar view has been reiterated by the Bench which held that: (SCC p. 493, para 9)

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus, the petitioners took a

chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285 : 1986 SCC (L&S) 644] it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

17. In Manish Kumar Shahi v. State of Bihar [(2010) 12 SCC 576 : (2011) 1 SCC (L&S) 256] , this Court reiterated the principle laid down in the earlier judgments and observed: (SCC p. 584, para 16)

“16. We also agree with the High Court [Manish Kumar Shahi v. State of Bihar, 2008 SCC OnLine Pat 321 : (2009) 1 AIR Jhar R 1015] that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not

commit any error by refusing to entertain the writ petition.”

18. *In Ramesh Chandra Shah v. Anil Joshi [(2013) 11 SCC 309 : (2013) 3 SCC (L&S) 129] , recently a Bench of this Court following the earlier decisions held as under: (SCC p. 320, para 24)*

“24. In view of the propositions laid down in the abovenoted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge [Anil Joshi v. State of Uttarakhand, 2012 SCC OnLine Utt 521] and the Division Bench [Ravi Shankar Joshi v. Anil Joshi, 2012 SCC OnLine Utt 766] of the High Court committed grave error by entertaining the grievance made by the respondents.”

27. As noted above, the petitioner has accepted the correctness of the evaluation process; the expertise of the examiners and reposed faith in the ability of the Examining Committee, when he participated in the examination five times, without making any objection or challenge, even if such challenge was maintainable.

The petitioner therefore, would stand precluded from making the present challenge on this ground alone.

28. The other important aspect of the matter is that the Regulation 12 clearly states no application for re-evaluation of the answer sheets shall be entertained. Is it open to this court to direct re-evaluation despite this prohibition?

29. Mr. Shishir Pinaki, ld. counsel for the petitioner has placed

reliance on the pronouncement of the Supreme Court reported at **(2004) 13 SCC 383, Board of Secondary Education v. Pravas Ranjan Panda & Anr..** In this case, the respondent no.1 appeared in High School Certificate Examination, 2003 as a regular candidate. He passed the said examination securing about 90% marks. The respondent no.1 filed a writ petition under Article 226 of the Constitution of India alleging that he had answered all the questions correctly without committing any mistake and, therefore, deserved full marks in each paper, but due to carelessness and negligence of the Board in appointing inexperienced and unqualified examiners in certain papers, low marks had been awarded to him due to which he lost his chance of being within the first ten examinees in the HSC Examination, 2003. The respondent no.1 prayed for re-evaluation of his answer sheets. The High Court had allowed the petition with a direction to the Board to scrutinise and recheck the answer scripts of examinees securing 90% and above marks in aggregate in HSC Examination, 2003 and if there is any change or variation in the marks, the petitioner shall be informed accordingly. So far as the candidates who secured less than 90% marks in aggregate, who had applied for rechecking and re-addition of marks in certain papers, are concerned, it was directed by the court that they have to be considered in accordance with the resolution of the Board for rechecking of marks. We may usefully extract the observations of the Supreme Court in para 6 of **Board of Secondary Education** which answered the above issue :

*“6. The High Court though observed that the writ petitioner who has taken the examination is hardly a competent person to assess his own merit and on that basis claim for re-evaluation of papers, but issued the aforesaid direction in order to eliminate the possibility of injustice on account of marginal variation in marks. It is an admitted position that the regulations of the Board of Secondary Education, Orissa do not make any provision for re-evaluation of answer-books of the students. The question whether in absence of any provision to that effect an examinee is entitled to ask for re-evaluation of his answer-books has been examined by us in **Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission** [(2004) 6 SCC 714 : 2004 SCC (L&S) 883] decided on 6-8-2004. It has been held therein that in absence of rules providing for re-evaluation of answer-books, no such direction can be issued. It has been further held that in absence of clear rules on the subject, a direction for re-evaluation of the answer-books may throw many problems and in the larger public interest such a direction must be avoided. We are, therefore, of the opinion that the impugned order of the High Court directing for re-evaluation of the answer-books of all the examinees securing 90% or above marks is clearly unsustainable in law and must be set aside.”*

30. The Board had sought review of this decision of the High Court contending that it would face immense difficulties in scrutinising and examining all answer-sheets after publication of results. This review was dismissed.

31. In the pronouncement of the Supreme Court reported at **(2009) 1 SCC 599, Sahiti & Ors. v. Chancellor, Dr. N.T.R. University of Health Sciences & Ors.**, the Supreme Court placed reliance on **(2004) 13 SCC 383, Board of Secondary Education**

and (2004) 6 SCC 714, *Pramod Kumar Srivastava v. Bihar Public Service Commission* and observed as follows :

“36. The Supreme Court (in Board of Secondary Education case [(2004) 13 SCC 383]) was of the opinion that the question whether in the absence of any provision to that effect an examinee is entitled to ask for re-evaluation of his answer books was examined by the Supreme Court in Pramod Kumar Srivastava v. Bihar Public Service Commission [(2004) 6 SCC 714 : 2004 SCC (L&S) 883] . It was noticed by the Supreme Court that in the said decision it was held that in the absence of rules providing for re-evaluation of answer books no direction should be issued because a direction for re-evaluation of the answer books would throw many problems and in the larger public interest such a direction must be avoided. Therefore, the Supreme Court expressed the opinion that the order of the High Court directing re-evaluation of the answer books of all the examinees securing 90% or above marks was clearly unsustainable in law and set aside the same. The above decision deals with the right of the student or candidate to claim re-examination/re-evaluation of his answer sheet and the power of the High Court to order revaluation of answer sheets. It does not deal with the power of the Board to order re-evaluation of answer books if the factual scenario so demands.

37. Award of marks by an examiner has to be fair and considering the fact that re-evaluation is not permissible under the Statutes at the instance of the candidate, the examiner has to be careful, cautious and has the duty to ensure that the answers are properly evaluated. Therefore, where the authorities find that award of marks by an examiner is not fair or that the examiner was not careful in evaluating the answer scripts, re-evaluation may be found necessary.

38. There may be several instances wherein re-evaluation of the answer scripts may be required to be ordered and this Court need not make an exhaustive catalogue of the same. However, if the authorities are of the opinion that re-evaluation of the answer scripts is necessary then the Court would be slow to substitute its own views for that of those who are expert in academic matters.

*39. Under the circumstances, the plea advanced on behalf of the respondents that the Vice-Chancellor of Dr. N.T.R. University of Health Sciences had no authority to order re-evaluation of the answer scripts, cannot be upheld. Therefore, this Court does not agree with the finding recorded by the Division Bench of the High Court that the Vice-Chancellor of the University had no power or jurisdiction to order the reverification of answer scripts. **However, the facts indicate that the Vice-Chancellor had exercised power to order reverification of answer scripts under pressure and coercion from the students and their parents and not independently on merits.***

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41. From the record it is evident that the University authorities, including the Vice-Chancellor, did not at all go into the merits of the allegations made in the complaints/representations submitted by the Parents' Association for reverification to find out whether there was any grain of truth in them. The record produced by the University does not give any indication of methodology adopted by the Committee for revaluation. Moreover, the members of the Committee appointed by the Vice-Chancellor for revaluation of answer scripts had undertaken reverification of 1082 answer scripts and completed reverification in two days, which itself indicates that the said revaluation was not properly done and no credence could be given to the same.

42. It is worth noticing that the decision of the Executive Council to cancel the result of the students on

*the basis of reverification and giving an opportunity to the failed students to reappear in the first year MBBS examination was approved by the Vice-Chancellor himself. Therefore, this Court is of the opinion that the Division Bench of the **High Court** was justified in upholding the decision of the Executive Council to cancel the result obtained on reverification of answer scripts.”*

(Emphasis by us)

32. So far as the present case is concerned, there is nothing before us which would enable us to conclude that the award of marks to the petitioner by the examiner is unfair, arbitrary or unreasonable. There is no allegation at all by the petitioner that there is any *mala fide* in the evaluation of his papers.

33. The issue as to whether in the absence of any provision of re-evaluation, a direction to this effect can be issued by the court, has been considered at length in a judgment dated 25th May, 2010 passed by the Supreme Court of India in **Civil App.No.907/2006, H.P. Public Service Commission v. Mukesh Thakur & Anr.** For reasons of expediency, we extract hereunder the binding consideration by the Supreme Court :

*“24. The issue of **re-evaluation** of answer book is **no more res integra**. This issue was considered at length by this Court in **Maharashtra State Board of Secondary and Higher Secondary Education & Anr. Vs. Paritosh Bhupesh Kurmarsheth etc.etc.** AIR 1984 SC 1543, wherein this Court rejected the contention that in absence of provision for re-evaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not providing for*

rechecking/verification/re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Court held as under:

“.....It is **exclusively within the province of the legislature and its delegate to determine, as a matter of policy**, how the provisions of the Statute can best be implemented and **what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act**... ..The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But **any draw-backs in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act**.....”

25. This view has been approved and relied upon and re-iterated by this Court in **Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna & Ors**, AIR 2004 SC 4116 observing as under:

“Under the relevant rules of the Commission, there is **no provision wherein a candidate may be entitled to ask for reevaluation of his answer-book**. There is a **provision for scrutiny only** wherein the answer-books are seen for the purpose of checking whether all the

answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. **In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for reevaluation of his marks.**” (emphasis added)

26. A similar view has been reiterated in ***Dr. Muneeb Ul Rehman Haroon & Ors. Vs. Government of Jammu & Kashmir State & Ors.*** AIR 1984 SC 1585; ***Board of Secondary Education Vs. Pravas Ranjan Panda & Anr.*** (2004) 13 SCC 383; ***President, Board of Secondary Education, Orissa & Anr. Vs. D. Suvankar & Anr.*** (2007) 1 SCC 603; ***The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das & Ors.*** AIR 2007 SC 3098; and ***Sahiti & Ors. Vs. Chancellor, Dr. N.T.R. University of Health Sciences & Ors.*** (2009) 1 SCC 599.

27. ***Thus, the law on the subject emerges to the effect that in absence of any provision under the Statute or Statutory Rules/Regulations, the Court should not generally direct revaluation.***”

(Emphasis by us)

34. In the present case the rules contain an absolute prohibition against revaluation. The prayer of the petitioner to this effect is clearly misconceived.

35. We have extracted the above provisions of Rule 2(i)(b) of

Order I of the Supreme Court Rules, 2013 which elaborates the functions of the advocate on record Supreme Court. It is evident therefrom that a person who fails to clear the AOR Examination does not lose the right to argue cases before the court but only loses the authority to file petitions and to file *vakalatnama* before the Supreme Court of India.

36. The petitioner could not meet the benchmark in different papers on different occasions which included Drafting at one time and Practice & Procedure of the Supreme Court as well as Advocacy & Professional Ethics in 2016. He has thus failed to satisfy the requirement laid down by the Regulations under which he took the examination and therefore, stands prohibited from engaging with the Registry of the Supreme Court. This prohibition, given the clear declaration in the regulations, cannot be faulted with.

37. The petitioner does not challenge the authority of the Supreme Court to control and regulate the persons who could be permitted to so act and conduct business with the Registry of the Supreme Court.

38. Even to the constitution and appointments of the Board and examiners , the petitioner has started to make objections only after he has failed to meet the benchmark. The challenge is clearly belated and an afterthought and ought not to be entertained for this reason alone.

39. The challenge to the AOR Regulations is therefore, misdirected and untenable. No legally tenable submission is placed

which would enable this court to find illegality in the appointment of the Advocates on Record Examination Committee or the examiners by the respondents.

40. We therefore, find no merit in this writ petition which is hereby dismissed. The pending application also stands dismissed.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

JULY 06, 2017

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