



2024:DHC:9059-DB



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

+ **W.P.(C) 3761/2018**

STAFF SELECTION COMMISSION & ORSPetitioners

Through: Ms. Pratima N. Lakra, CGSC
with Mr. Chandan Prajapati, Advocate

versus

DARPAN SHARMARespondent

Through: Mr. L.R. Khatana, Advocate

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)

18.11.2024

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C.HARI SHANKAR, J.

1. The respondent participated in the Combined Graduate Level Examination¹ 2015, conducted by the Staff Selection Commission² for recruitment to the various civil posts under the Central Government. The examination was to be conducted in two tiers, Tier-I and Tier-II. Candidates who qualified in Tier-I were shortlisted for participation in Tier-II. Tier-II consisted of 2 papers, Paper-I and Paper-II.

2. The respondent qualified Tier-I, and appeared in Paper-I in Tier-II on 25 October 2015. Each candidate was required to fill an

¹ CGLE

² SSC



attendance sheet and an OMR³ Sheet. The candidate was required to fill the Test Form Number – which was specific to each individual candidate – in the Attendance Sheet and the OMR Sheet. The candidate was required to darken the bubbles over the appropriate digits, so that the Test Form Number would be reflected. It requires to be mentioned, here, however, that the OMR Sheet, which is on record, has the Test Form Number printed on the upper left corner of the form. The Test Form Number of the respondent for Paper-I in Tier-II was 1144135.

3. The respondent entered his Test Form Number in his Attendance Sheet, but omitted to blacken/darken the appropriate bubbles relating to the Form Number in his OMR Sheet. As a result, the respondent's answers in Paper-I were not evaluated. The respondent did not, however, commit the same mistake in Paper-II of his Tier-II examination which was, therefore, evaluated.

4. The respondent belongs to the unreserved category, for which the cut-off marks, for the entire CGLE, were such that of 430.75, out of a total of 600, 200 marks being assigned to each Paper. The respondent scored 129.25 marks in Tier-I and 171.25 marks in Paper-II in Tier-II. However, as his Paper-I in Tier-II was not evaluated, the respondent could not make the cut off of 430.75.

5. The written examination was followed by an interview. The respondent was not called for the interview, as he had not made the cut off of 430.75 in the written examination.

³ Optical Mark Recognition



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6. Aggrieved thereby, the respondent approached the Central Administrative Tribunal⁴ by way of OA 1022/2016. Before the Tribunal, one of the contentions advanced by the respondent was that, based on the answer key for Paper-I of the Tier-II examination, he would have scored 157 or more marks in the said Paper which, when added to the marks scored by him in Tier-I and in Paper-II in Tier-II, would have totalled to 457.5 marks or more, thereby enabling him to scale the cut-off of 430.75 for the unreserved category. While submitting that it was owing to the tremendous pressure faced by him, as also by other candidates while attempting such examinations, that he, inadvertently, failed to darken the bubbles relating to the Test Form Number in his OMR Sheet, he pointed out that the Test Form Number – in his case, 1144135 – was, even otherwise, printed on the OMR Sheet itself. As already noted, we have seen the OMR sheet and find this assertion to be correct.

7. As against this, the petitioner, as the respondent before the Tribunal, relied on General Instruction⁵ 9(C) in the Notice inviting applications for the CGLE 2015, which read:

“Candidate should write and code his/her Name, Roll Number of the Examination etc. as mentioned in the Admission Certificate, Date of Birth and Test Form Number fully and correctly in the relevant places in OMR Answer Sheet. Answer Sheet not bearing candidate’s Roll Number, Test Form Number, Signature and Left Thumb Impression or improper/incomplete coding of these details will not be evaluated.”

It was submitted that the OMR sheet further stipulated as under:

“A machine will lead the coded information in the OMR Sheet.
In case any of the coded information is incomplete or different

⁴ “the Tribunal” hereinafter

⁵ “GI” hereinafter



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from the information given in the application form, the answer sheet of the candidate will not be evaluated.”

The petitioner sought to contend, before the Tribunal, that, as the OMR Sheet was machine read, the respondent's answer sheet was not evaluated only because of the respondent's own default in failing to blacken/darken the bubbles relating to his Test Form Number in the OMR Sheet. Hundreds of such OMR Sheets, which were incompletely filled in or coded were, it was submitted, not read, and the position in which the respondent found himself was not unique to him. If all such candidates were to approach the Court, it was submitted that an exercise of manual checking of all papers would be a humongous task.

8. By way of interim relief, the Tribunal, by order dated 23 September 2016, permitted the respondent to participate in the interview, subject to the outcome of the OA. However, as, by the time the order was passed, the interviews of the candidates had already taken place, the interim order could not be implemented. The petitioner had brought this fact to the notice of the Tribunal by way of RA 86/2017.

9. Though the respondent, thus, could not avail the benefit of the interim order passed by the Tribunal, he finally succeeded as, by the impugned order dated 12 May 2017, the Tribunal has allowed the respondents OA 1022/2016. The Tribunal has followed the judgement of a Division Bench of the High Court of Andhra Pradesh



in *UOI v Guduru Raja Surya Praveen*⁶.

10. Apropos an objection, raised by the petitioners, as the respondents before it, that the exercise of interviews already stood completed and successful candidates assigned their respective departments/posts depending on their position in the merit list, the Tribunal held thus:

“11. One difficulty mentioned by the respondents is that in this case interviews have already been completed and the successful candidates have already been assigned the Department/posts depending on their position in the merit list. We do appreciate the difficulty expressed by the learned counsel for the respondents. However, that cannot be a ground to deny a young man this opportunity of livelihood: through his hard work and efforts. We, therefore, direct the respondents to hold an interview for the applicant and, in case he is successful and finds place in the merit list, assigned him a department/post where vacancies available, without disturbing the assignment to the departments/posts already assigned to the successful candidates. This exercise should be completed within a period of 90 days from the receipt of a certified copy of this order.”

11. We have heard learned counsel for the parties. They have, broadly, reiterated their respective stands before the Tribunal.

12. Having gone through the judgement of the High Court of Andhra Pradesh in *Guduru Raja Surya Praveen*, we are in entire agreement with the Tribunal that the present case is fully covered by the said decision. In that case too, in respect of the very same examination which was undertaken by the respondent, *albeit* for an earlier year, the candidate had not blackened completely the Test

⁶ 2015 SCC OnLine Hyd 437



Form Number. The High Court of Andhra Pradesh held this to be a condonable lapse and that the authorities could not refuse to evaluate the respondent's answer sheet for that reason. It was also directed by the High Court of Andhra Pradesh that this benefit should be extended to all other candidates who may have committed similar mistakes. To the extent relevant, the following paragraphs from the judgement of the High Court of Andhra Pradesh in ***Guduru Raja Surya Praveen*** merit reproduction:

“3. The Staff Selection Commission has issued a notification for Combined Graduate Level Examination 2014, for recruitment to different posts for which graduation from any recognized university is the minimum requisite qualification. The test is conducted in two tiers and thus marks of the candidates at both the tests would be taken into consideration for purposes of preparing the merit list. Accordingly, the test was conducted on 26.10.2014, whereat, the first respondent herein appeared with Roll No. 2201213731 and Hall Ticket No. 2116419 at Azmer, Rajasthan. In Tier-I examination, when the results were published, the first respondent herein was declared to have secured 138 marks which fetched him an overall merit ranking of 609. Thereafter, Tier-II examination was conducted on 12.04.2015 at New Delhi and while the roll number remained to be the same, the hall ticket number for Tier-II examination bearS No. 2122101. Tier-II examination comprised of two papers. In Paper-I, he was declared to have secured 155 marks while his result for Paper-II was not evaluated. Thus, the first respondent herein sought for the information under the Right to Information Act and secured the necessary information as to the reasons why Paper-II of Tier-II examination has not been evaluated sofaras the first respondent is concerned. While enclosing a photocopy of the Paper-II answer sheet, *the reason assigned for its non-evaluation is stated that he had failed to shade/blacken the test form number in the answer sheet. For this failure, to blacken/shade the test form number, the evaluation has not taken place.* The Tribunal, after considering the rival submissions, has noticed that insofar as Tier-I, the applicant has secured 138 marks and in Paper-I of Tier-II, he has secured 155 marks, thus totaling to 293 marks out of 400, which works out to 73.25% and hence, he appears to be a meritorious candidate *and the failure to shade/blacken the test form number in the answer sheet is a technical error which has no direct bearing upon the*



issue of undertaking the evaluation of his Paper-II. At page number 76 of the paper book filed along with this writ petition, a photocopy of the answer sheet of the first respondent herein for Paper-II of Tier-II of the selection process has been enclosed. We have noticed that there are three columns which are required to be filled in by the candidate in this answer sheet. The first column related to test form number, while the second related to hall ticket number and the third relates to roll number. After entering the respective digit in the blocks set-apart for the said purpose, the candidates were also required to thicken/blacken the corresponding digit published down below the column where the number has got to be entered.

4. As was already stated, there is no dispute with regard to the entry made by the first respondent relating to hall ticket number and roll number. Even with regard to the test form number, he has thickened the relevant circle representing the digits 6, 5, 7 & the letter Q, but however, he has omitted to thicken the relevant circle for the capital letter P and the digit 3.

5. Now, the question is whether this error of not thickening a couple of circles in the answer sheet of Paper-II of Tier-II examination should result in a total denial of evaluation of the answer script.

6. The answer sheet is prepared in such a manner that it is ready to be scanned and the preloaded software of correct answers would undertake evaluation of the answer sheet simultaneously. Hence, each candidate was required to go through the questions in the question paper carefully and then thicken the corresponding correct circle representing A, B, C & D, options of answers which are notified for each question. By this method of thickening the circle concerned, which is treated as the appropriate answer to the question concerned, the process of evaluation becomes easier and quicker, inasmuch as, a pre-programmed computer can easily scan the answer sheet and by recognizing the thickened circle against each of the questions and compare it with the pre-programmed answer and appropriate marks can be awarded when the answer matches with the key answer programmed to the computer. When thousands of aspirants take the exam, the examinations are sought to be conducted by holding an objective type of examination. It would facilitate to test the accurate knowledge of the candidate concerned, inasmuch as, four different options of answers are furnished right beneath each question. Out of the four answers so furnished for each question, the candidate must decide as to which of the four options provided reflects the correct and accurate answer and accordingly, thicken the circle concerned. For instance,



for question number 1, if a candidate considered that out of the four options, option A is the correct answer, he has to thicken the circle A in the answer sheet opposite to question no. 1. Similarly, for question no. 2 if the candidate considers that answer at option B is the correct answer, he was required to thicken the circle B against question no. 2. Similarly, he has to thicken the circles C & D to the respective questions where he considers such option as the correct option for the question concerned. This would facilitate the computer to scan the answer sheet for all the 200 questions in few seconds time and then, compare the answers furnished by the candidate by thickening the circles concerned with the already pre-prepared and programmed answers and as a result, the whole exercise of evaluation takes less than a minute per every candidate. By adopting this method of optic reading, hundreds and thousands of answer sheets can be got evaluated in very quick time. This would also avoid the possible error margin and would also avoid the element of adversely affecting the prospects of any candidate.

7. However, it is not the same with regard to entering the test form number, ticket number and roll number. The first respondent has entered his ticket number, roll number and also the test form number very accurately against the respective columns. There is no difficulty or denying of this fact. There is also no denying the fact that he has thickened the appropriate circle with regard to all the digits of ticket number and roll number. Only with regard to test form number while the initial four circles have been accurately thickened, the last two columns relating to thickening the letter P and digit 3 were left without being thickened. *It is so obvious that there was lapse of concentration on the part of the first respondent in omitting to thicken two out of six columns relating to the test form number. Therefore, the failure to thicken two relevant circles with regard to the test form number namely letter P and digit 3 will not in any manner materially or substantially alter or cause hardship in evaluating the answers which have been furnished for the questions 1 to 200. At best, it would require a little more time to be spent on the part of the concerned at the stage of tabulating the marks secured by the respective candidates. But in no manner, it will impact the process of evaluating the answer sheets. We are, therefore, of the opinion that such non-substantive and non-material irregularities shall not result in denying the benefit of evaluation of the answer sheet of a candidate.*

8. One should not loose sight of the fact that the primary concern and aim of the Staff Selection Commission was to select the most meritorious candidate amongst the competing candidates. With a view to maintain the accuracy and integrity of the process of evaluation of the answer sheets, instead of undertaking



evaluation manually the process of computerized evaluation was chosen and hence, the method of thickening the circle concerned against each question was devised. Therefore, for the evaluation of the answers furnished for questions 1 to 200, the failure of any candidate to thicken any other column relating to the test form number, ticket number or roll number will not come in the way or cause any hindrance. For instance, a candidate may not be knowing answers for certain number of questions and hence he may not chosen to take a chance and may not have thickened any of the four options on the answer sheet for such questions. That will not come in the way of the computer reading the rest of the questions answered by him and awarding marks for the correct answers furnished by him. For the failure to thicken all the circles of the ticket number, at best, the evaluated marks may not automatically be posted in the record relating to the respective candidates. It might require a verification by one concerned or the other of such an answer sheet. But, that is no reason for denying the evaluation itself.

9. Providing an equal opportunity to compete for selection to public employment is a fundamental right enshrined under Articles 14 & 16 of our Constitution. In matters of such fundamental rights, no impediment which is more in the nature of a technicality should be allowed to play a substantive role resulting in denial altogether of such rights. To the extent possible, fundamental rights should be allowed to have a free flow effect and impact. Therefore, looked at from any perspective, failure to thicken a couple of circles not with regard to the answers to be furnished by the candidate to the questions 1 to 200, but with regard to the test form number, in our opinion would not be fatal. In fact, in the present case, the test form number has been accurately filled-in, in the column provided for that purpose in the answer sheet. There is also a corresponding verification exercise by thickening the circle concerned furnished down below the test form number. Due to lapse of concentration, obviously induced by the enormous pressure, one would feel at the initial stage of subjecting himself to an examination, an error resulted in not thickening the circle relating to the token number and such technical error should not result in negation of the right to be considered for public employment notwithstanding the demonstrable merit processed by the candidate concerned. We are, therefore, of the opinion that the failure on the part of the Staff Selection Commission to evaluate the answer sheet of the respondent relating to Paper-II of the Tier-II test that was conducted on 12.04.2015 as an erroneous decision. In fact, we should also record that, pursuant to an interlocutory order passed by us on 14.10.2015, the answer sheet of the first respondent herein was got evaluated and the learned Assistant Solicitor



General has, brought on record the order dated 06.11.2015 passed by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Staff Selection Commission (Southern Region), bringing it out that the first respondent herein has qualified in Tier-II for appearing in the interview for posts other than the Statistical Investigator Grade-II and also for such posts for which interview is not forming part of the selection process. In other words, the merit of the first respondent herein has been held established. We have taken on record the communication dated 06.11.2015 of the Regional Director of the Staff Selection Commission (Southern Region) which was placed before us along with a memo dated 12.11.2015 by the learned Additional Solicitor General.

10. We are, therefore, of the opinion that there is no merit in this writ petition, inasmuch as, the order passed by the Central Administrative Tribunal does not warrant any interference at our hands.

11. But however, we are of the opinion that when the process of direct recruitment to various posts in various civil services of the Central Government is undertaken, the primary concern is to pick up the most meritorious candidate from the respective segments for selection. Picking up the most meritorious candidate would also additionally sub-serve the larger public interest apart from complying with the principle of equality contained under Article 14 and equal opportunity contained in Article 16 of our Constitution. The very purpose of undertaking direct recruitment is to ensure the best of the most talented are picked up for public employment. By appointing such meritorious candidate, the efficiency of public services would attain the necessary standards which are set for that purpose. Therefore, an element of flexibility to ignore non-substantive errors committed by a candidate would only enhance and promote the larger public interest. Hence, if, there are any such similar cases as that of the first respondent herein, are lying, answer sheets of such candidates irrespective of the fact whether one has approached one High Court or the other should be undertaken for evaluation. The principle underlying is that the litigative ability and the free access to candidates is available to only few candidates and the financial ability to pay for the litigation expenses cannot act as a premium for securing justice. Justice to all and that too the inexpensive one is the motto of our Courts. All the unemployed young persons may not have adequate financial support to carry on with litigation. It is not the petitioner who has approached the Court alone who might get the ultimate relief, but it might be the one which may not have the necessary wherewithal to approach the Court who should be



getting the actual relief, if he is better candidate than the one who has approached the Court. But, that would depend upon the relative merit of the candidates. In fact, this is the very same principle applied while dealing with the litigation relating to admission to medical colleges, engineering colleges and other higher educational institutions is pursued by the Courts. Therefore, a similar approach is called for even in the matter of public employment. The writ petition is accordingly dismissed, but however, without costs.

12. Therefore, we direct the Staff Selection commission to undertake evaluation of the answer sheets of all such candidates who might have made an error in not thickening/blackening the appropriate circles relating to one column or the other for hall ticket number, roll number and accordingly declare their results at the earliest.”

Thus, the lapse, on the part of the respondent before the High Court of Andhra Pradesh, and the lapse committed by the respondent before us, is, to all intents and purposes, are identical. Though a failed effort was made, by Ms Lakra, learned CGSC for the petitioners, to differentiate this case from that on the ground that, while the respondent before the High Court of Andhra Pradesh had blackened/darkened 4 of the 6 digits relating to his Test Form Number, the respondent before us had not darkened any of the digits, this, quite obviously, cannot be regarded as a legitimate point of distinction. Darkening 4, out of 6, circles is as condonable, or inexcusable, as darkening none of the circles. In either case, the computer, or the machine, would not be able to read the answer sheet. Besides, what matters in a judgement is its *ratio decidendi*, and the *ratio decidendi* of the judgement of the High Court of Andhra Pradesh is clearly applicable to the facts on hand.



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13. The judgement of the High Court of Andhra Pradesh in ***Guduru Raja Surya Praveen*** was carried in appeal to the Supreme Court by way of SLP (C) CC 9879/2016, in which the following order was passed by the Supreme Court on 1 July 2016:

“Delay condoned.

Since the sole respondent has appeared on caveat and has waived notice, no notice need to be issued.

Counter affidavit be filed within 4 weeks. Rejoinder, if any, be filed within a further period of 4 weeks. List the matter after 8 weeks.

Let it be recorded that we are more concerned with the directions of the High Court at page 22 of the Impugned Order expanding the scope of the Writ Petition to all the examinees who had taken the test and may have made an error like the writ petitioner. In view of the submissions on behalf of the Staff Selection Commission (in short “the SSC”) and the practical difficulties involved, the direction at page 22 of the Impugned Order to undertake evaluation of answer sheets of all the candidates who might have made an error is stayed. However the direction in respect of the respondent may be carried out but all consequential benefits to the respondent shall be subject to the final outcome of this special leave petition.”

Thus, the Supreme Court did not deem it appropriate to stay the judgment of the High Court of Andhra Pradesh, insofar as the respondents before the High Court was concerned, but state the judgment to the extent the High Court directed the police to be extended to all candidates who had committed similar errors. The order also observes that this limited interdiction was on account of the difficulties expressed by the SSC, were it to be compelled to evaluate the papers of all similar candidates.

14. Subsequent to the filing of the present writ petition, we find,

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from the website of the Supreme Court, that the aforesaid SLP, preferred by the Union of India against the judgement of the High Court of Andhra Pradesh in *Guduru Raja Surya Praveen*, was dismissed on 30 July 2019. The said order reads as under:

“We have heard learned counsel appearing on behalf of the parties.

The issue relates to incorrect coding of the particulars of the test form number in OMR Sheet relating to the Combined Graduate Level Examination, 2014. Having taken note of this aspect, we find that the issue as raised in this petition need not be adverted to on its merits since in the peculiar facts and circumstances of the case it would suffice if the relief granted by the Tribunal and upheld by the High Court is limited only to the respondent.

The observations/directions as contained in the order of the High Court granting the general relief of evaluation of answer sheets to all candidates reads as under:

"All the unemployed young persons may not have adequate financial support to carry on with litigation. It is not the petitioner who has approached the Court alone who might get the ultimate relief, but it might be the one which may not have the necessary wherewithal to approach the Court who should be getting the actual relief, if he is better candidate than the one who has approached the Court. But, that would depend upon the relative merit of the candidates. In fact, this is the very same principle applied while dealing with the litigation relating to admission to medical colleges, engineering colleges and other higher educational institutions is pursued by the Courts. Therefore, a similar approach is called for even in the matter of public employment. The writ petition is accordingly, dismissed but however, without costs.

Therefore, we direct the staff selection commission to undertake evaluation of the answer sheets of all such candidates who might have made an error in not thickening/blackening the appropriate circles relating to one column or the other for hall ticket number, roll number and accordingly, declare their results at the earliest".

Since we have limited the relief to the respondent-herein, the above said general direction shall stand set aside and we reiterate



and clarify that the relief granted by the High Court would stand limited to the case of the respondent- herein. The special leave petition is, accordingly, disposed of.

The question of law raised by the Union of India is left open. Since the examination is of the year 2014, it is expected that the Union of India will take the follow-up steps qua the respondent as expeditiously as possible. Pending application(s), if any, shall also stand disposed of.”

15. Thus, even in its final order, the Supreme Court maintained the relief granted to the respondent before the High Court of Andhra Pradesh, even by leading the question of law open. The judgement of the High Court was set aside only to the extent it directed extending of the relief to all candidates, who had participated in the examination and committed similar errors.

16. We are conscious of the fact that, in its final order dated 30 July 2019, the Supreme Court left the question of law, arising before it, open. That, however, according to us, only means that the Supreme Court did not pronounce on the question of law that arose before it. The implication of the Supreme Court leaving the question of law open was only, therefore, that the Supreme Court has not pronounced on the question of law which arose in the SLP, one way or the other. That, however, does not, in any way, lessen the precedential value of the judgement of the High Court. When, in the case of a candidate situated identically to the respondent in the present case, relief was granted by the High Court, and the grant of the said relief was performed by the Supreme Court, there can be no two views on the fact that the respondent would be entitled to the same relief. Else, it would result in a situation in which two persons, identically situated,



had been accorded differential treatment by Courts, which is obviously unthinkable in law.

17. On the implication of a question of law being left open by the Supreme Court, while dismissing an appeal or a Special Leave Petition, a Division Bench of the High Court of Gujarat in ***Collector v. Liquidator Petrofills Cooperative. Ltd.***⁷, ruled thus:

“27. When the Supreme Court records that the question of law is kept open, *undoubtedly it is meant to be reconsidered in future by the Supreme Court only. The question of law, as correctly contended by Shri P. Chidambaram, is not kept open for the High Court.* This is precisely what was held and observed by the Division Bench of this Court in an unreported decision in Tax Appeal No. 380/2013 dated 9/12/2013. We are in full agreement with the view expressed therein. It was a case where an issue of unabsorbed depreciation under section 32(2) of the Income Tax Act, 1961, was raised by the Revenue before the High Court. An identical issue was already decided by the High Court in case of ***General Motors India (P) Ltd. v. Deputy Commissioner of Income Tax***⁸ by allowing the appeal of the assessee and setting aside the order of the Commissioner. The judgment of the High Court was carried in appeal before the Supreme Court. The Supreme Court dismissed the SLP making it clear that the question of law is kept open. When a similar question came up before the High Court in the Tax Appeal, the Revenue argued that when the Supreme Court has left the question of law open, it would be open for the High Court to reconsider the issue regardless of the judgment of another Division Bench in case of ***General Motors Pvt. Ltd. v Deputy Commissioner of Income Tax***⁹. It was in this background, Division Bench made the following observations:

"10. Now so far as the submission made by learned counsel appearing on behalf of the revenue that though against the decision of the Division Bench of this Court in the case of ***General Motors India (P) Ltd. Vs. Deputy Commissioner of Income Tax (supra)***, as such, Special Leave to Appeal was preferred before the Honble Supreme Court and the same came to be dismissed by the Honble

⁷ MANU/GJ/1291/2015

⁸ (2013) 354 ITR 244 (Guj)

⁹ MANU/GJ/0909/2012



Supreme Court on the ground of delay and kept the question of law open, this Court may consider the question of law raised on merits is concerned, the same cannot be accepted. It is required to be noted that as such, consideration of the question raised with respect to set off of unabsorbed depreciation on merits, there is a direct decision of the Division Bench of this Court in the case of ***General Motors India (P) Ltd. Vs. Deputy Commissioner of Income Tax (supra)***. Against the said decision, the Special Leave to Appeal was preferred and the same came to be dismissed on the ground of delay and the Honble Supreme Court kept the question of law open. Therefore, it cannot be said that the said question of law is kept open by the Honble Supreme Court to consider subsequently by this Court Coordinate Bench. It can be said that the said question of law is kept open by the Honble Supreme Court to consider subsequently in other cases by the Honble Supreme Court. So far as this Court is concerned, the decision of the Division Bench of this Court in the case of ***General Motors India (P) Ltd. Vs. Deputy Commissioner of Income Tax (supra)*** is binding unless a contrary view is taken and the matter is referred to the Larger Bench. In view of the decision of the Division Bench of this Court in the case of ***General Motors India (P) Ltd. Vs. Deputy Commissioner of Income Tax (supra)*** which has been relied upon by the learned ITAT while passing the impugned judgment and order, as such, no question of law much less any substantial question of law arises now."

28. We are in full agreement with the view so expressed and in our understanding brings about a correct legal position. *When a question of law is kept open by the Supreme Court not entertaining a SLP against the judgment of the High Court, in fact, what is done is neither to confirm nor to dilute the ratio of the judgment under challenge. That however, does not mean that the High Court in a future case is allowed to take a fresh view ignoring the law of precedence. It only means that the Supreme Court refused to bind itself or put its seal on the ratio propounded by the High Court in the judgment under challenge. Therefore, when an identical question comes up before the same High Court and is presented for consideration before a Bench of coordinate strength, by virtue of principles of law of precedence, the Bench would be bound by the ratio of the earlier judgment of the High Court, unless persuaded to refer it to a larger Bench. This is precisely what has been recorded by the Division Bench in the said case and this is why the Bench was of the opinion that it had either to follow the ratio in case of General Motors or make a reference to the larger*



Bench. This per-se however, would not mean that the review consideration is shut out, if the review is otherwise maintainable. Normally, in almost all the cases, the same Bench would be reconsidering the matter on the grounds raised in the review petition. If in the process, it is found that the proposition of law laid down suffers from some error apparent on face of the record, review certainly would be available. In other words, if a decision has become final, it would continue to bind the Bench of coordinate strength of the same High Court in future though in SLP the Supreme Court it might have been observed that the question of law is kept open. But when a review petition comes before the same Bench, it is the judgment in review which is being criticised. It would have the same limitations as in any other case of review where SLP may not have been filed. Nothing more nothing less. In other words, the expression "question of law is kept open" does not put any additional fetters on the High Court exercising review powers.

18. We find ourselves in respectful agreement with the above views expressed by the Division Bench of the High Court of Gujarat.

19. Inasmuch as the Supreme Court has upheld the grant of relief to the petitioner before the Andhra Pradesh High Court and there is no substantial difference between the error committed by the Petitioner before the Andhra Pradesh High Court and the present respondent, in our view, keeping in mind the order passed by the Supreme Court, the petitioner would be entitled to similar relief. We, therefore, find no reason to interfere with the impugned judgement of the Tribunal, which so holds.

20. Besides this, we note two other facts.

21. The first is that the error committed by the respondent was only with respect to not blackening the digits referring to the Test Form



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Number. We find that the Test Form Number i.e. TQ 1144135 is specifically noted on the top left corner of the OMR sheet. It is not, therefore, as though the Test Form Number was not available on the OMR sheet, even though, the respondent, as Mr. Khatana candidly concedes, did commit a mistake in not blackening the same number in the place provided in the OMR sheet.

22. The second circumstance, to which Mr. Khatana draws our attention, is a Note, at the foot of the answer sheet which require the Invigilator who signs the attendance sheet to first verify that all details have been correctly filled in. This is obviously in recognition of the fact that candidates who undertake such examinations are in a state of heightened tension and may commit silly errors, as was committed by the respondent before us. The duty, cast on the Invigilator to verify that all details in the answer sheet had been correctly filled in case, quite obviously, is to avoid the possibility of silly errors coming into view of her dispassionate evaluation of the merit of the concerned candidate.

23. There is no dispute about the fact that the Invigilator had in fact signed the attendance sheet of the respondent.

24. Ms Lakra sought to place reliance on the judgement of the Supreme Court in *State of Tamil Nadu v G. Hemalathaa*¹⁰. In our view, the said decision is clearly distinguishable. That was a case in which there was a specific instruction proscribing the use of pencil on

¹⁰ (2020) 19 SCC 430



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the answer sheet, and all the entries by the candidates had been made in pencil. This, on the other hand, is not a case in which there was a breach of any prescribed proscription.

25. Besides, when the case is covered on facts by the decision of the Supreme Court in the case of an identically situated candidate, no occasion arises for us to look elsewhere for the law on the subject.

26. For the aforesaid reasons, we find no reason to interfere with the impugned judgment of the Tribunal which is affirmed in its entirety.

27. The petition is accordingly dismissed.

28. The time for compliance with the directions issued by the Tribunal stands extended by a period of 4 weeks from today.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 18, 2024/yg

Click here to check corrigendum, if any