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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 13.09.2018

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W.P.(C) 7721/2018 & CM No. 29602/2018

TAJE SUFIYAH SULAIMAN

... Petitioner

versus

UNION OF INDIA AND ANR.

... Respondents

Advocates who appeared in this case:

For the petitioner :Mr J. Sai Deepak with Mr Avinash K. Sharma.
For the respondents :Mr Anurag Ahluwalia, CGSC for UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition seeking directions for reassessment of her answer sheet to question no.1 of paper-II of the Patent Agent Examination held in the year 2016. The respondents contend that their policy does not permit any reassessment of answer sheets and, therefore, the petitioner's request for reassessment cannot be acceded to. The petitioner claims that in absence of any rule prohibiting such re-evaluation, she is entitled to such reassessment. In this view, the limited question that falls for consideration of this Court is whether the

petitioner is entitled to reassessment of the answer sheet submitted by her.

Factual Background

2. In 2016, the Patent Office conducted the Patent Agent Examination (hereafter ‘the Examination’) after a gap of three years. The Examination was held in three rounds: Paper-I, Paper-II and Viva-Voce. Whereas Paper-I was an objective paper for a maximum of 100 marks, Paper-II was a subjective paper for a maximum of 100 marks. The third round, that is the Viva-Voce, was a maximum of 50 marks. A candidate had to fulfill two conditions to qualify the Examination. First, to score a minimum of fifty marks each in paper – Paper-I and Paper-II; and second, to score an aggregate of sixty percent of the total marks – that is, a cumulative of sixty percent of the total marks obtained in Paper-I, Paper-II and Viva-Voce exam. Further, a candidate could appear in the Viva-Voce exam only if he fulfills the first condition mentioned hereinabove.

3. The petitioner appeared for the Examination conducted on 27.11.2016 at one of the examination centers in New Delhi. Thereafter, on 08.12.2016, the list of the candidates, who had scored 50% or more marks in Paper-I and Paper-II, was declared.

4. The petitioner failed to make the cut in the aforesaid list. On 12.01.2017, the Patent Office declared the marks awarded to the candidates in Paper-I and Paper-II. The petitioner was awarded 78 marks in Paper-I and 49 marks in Paper-II, thereby falling short by one mark for qualifying Paper-II. The petitioner scored an aggregate of more than 60%

in Paper-I and Paper-II, but she could not qualify for the next round, as she failed to secure minimum 50% marks as required in Paper-II.

5. On 03.02.2017, the petitioner filed an application under the Right to Information Act, 2005 seeking the copies of her answers sheets of the Examination. The concerned Central Public Information Officer (CPIO) supplied the same to the petitioner. On perusal of the said answer sheets, the petitioner found that she was marked 'Zero' (impugned marks) against Question no.1 in Paper-II.

6. Aggrieved by the aforesaid evaluation, the petitioner sent an e-mail dated 28.02.2017 to the Examiner of Patents & Designs on guidance of reassessment of the marks. The petitioner received a reply on 01.03.2017 to the said mail, wherein it was stated that revaluation will not be done as per the policy but an unevaluated answer will be open for consideration.

7. Thereafter, the petitioner sent several mails to respondent no.2 for considering her case. She received a reply on 11.04.2017, which stated that the representation made by the petitioner had been considered and it was clear that the said "*question was evaluated*". It was further stated that revaluation will not be considered.

8. On 18.04.2017, the petitioner sent a letter to respondent no.2 requesting that matter be considered afresh for allocation of marks against her answer to the Question no.1 of Paper-II. But the petitioner did not receive any response to the said letter.

9. Aggrieved by denial of her request, the petitioner filed the present petition.

Submissions

10. Mr. Sai Deepak, the learned counsel appearing for the petitioner referred to the decision of the Supreme Court in ***Ran Vijay Singh & Ors. v. State of Uttar Pradesh & Ors.: (2018) 2 SCC 357***. He drew the attention of this Court to Paragraph 30.2 of the said decision and contended that in the present case, there was no rule or regulation which either permitted re-evaluation or scrutiny of the answer sheet or prohibited the same. He submitted that in such cases, the court is duly empowered to direct re-evaluation of the answer sheet. He also referred to the answer provided by the petitioner to Question No.1 of Paper-II of the Examination and submitted that the said answer was correct and, in any case, would deserve atleast some marks. He submitted that assessing the answer as 'zero' was *ex-facie* erroneous and, therefore, the respondents ought to be directed to reassess the petitioner's answer sheet. He further contended that the Examination was not a competitive examination but merely permitted the candidate to act as a Patent Agent in terms of Section 126 of the Patents Act, 1970 (hereafter 'the Patent Act'). He submitted that the rationale for not readily acceding to re-evaluation of the answer sheet in respect of a competitive examination is that such process would also affect the order of merit. He submitted that in the present case, the Examination in question was not a competitive examination and, therefore, the respondents should have no reservation to reassess the petitioner's response to Question No.1 of Paper-II in the Examination. He

also contended that the respondents' policy for not re-evaluating the answer sheets would be of no relevance, as the Examination was conducted in accordance with the Patent Rules, which did not refer to any such restriction.

11. Mr. Ahluwalia, the learned counsel appearing for the respondents handed over the Minutes of the Meeting of the concerned Committee, held on 04.07.2016, and Minutes of the Patent Agent Examination Board Meeting, held on 22.09.2016. He submitted that the concerned Committee had considered various facets of holding the Examination at a meeting held on 04.07.2016. He drew the attention of this Court to Paragraph 7 of the said Minutes, wherein the Committee had decided that a policy be adopted to not to re-check the answer sheet but only to re-calculate the marks obtained. He submitted that the aforesaid decision was subsequently accepted at the Patent Agent Examination Board Meeting held on 22.09.2016. He submitted that the said Minutes clearly indicated a firm policy of the respondents not to re-evaluate the answer sheets of various examinees. He also referred to the decision of the Supreme Court in ***Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors.: (2004) 6 SCC 714***, in support of his contention that re-evaluation of answer sheets could not be done in absence of any specific provision in the Rules, Regulations or the Policy permitting such re-evaluation.

Reasons & Conclusion

12. Section 126 of the Patent Act provides for the necessary qualification for registration as a patent agent. In terms of sub-section(1) of Section 126 of the Patent Act, a person would be qualified to have his name entered in the Register of Patent Agents if he fulfills the conditions set out therein. Clause (c) of Section 126(1) of the Patent Act is relevant and is set out below:

“(c)he has obtained a degree in science, engineering or technology from any university established under law for the time being in force in the territory of India or possesses such other equivalent qualifications as the Central Government may specify in this behalf and, in addition,-

(ii) has passed the qualifying examination prescribed for the purpose; or

(iii)has, for a total period of not less than ten years, functioned either as an examiner or discharged the functions of the Controller under section 73 or both, but ceased to hold any such capacity at the time of making the application for registration;”

13. In terms of Section 126(1)(c)(ii) & (iii) of the Patent Act, a person is required to clear the qualifying examination prescribed for the said purpose.

14. Section 159 of the Patent Act empowers the Central Government to make rules for carrying out the purposes of the Patent Act. Clause (xiv) of Section 159(2) of the Patent Act expressly empowers the Central

Government to make rules for conducting the qualifying examination for Patent Agents. Section 159(2)(xiv) of the Patent Act is set out below:

“159. Power of Central Government of make rules.—

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(2) Without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for all or any of the following matters, namely:—

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(xiv) the manner in which the register of patent agents may be maintained under sub-section (1) of section 125 and the safeguards to be observed in the maintenance of such register of patent agents on computer floppies, diskettes or any other electronic form under sub-section (2) of that section; the conduct of qualifying examinations for patent agents; and matters connected with their practice and conduct, including the taking of disciplinary proceedings against patent agents for misconduct;”

15. In exercise of powers conferred under Section 159 of the Patent Act, the Central Government had notified the Patent Rules, 2003 (hereafter ‘the Patent Rules’). Rule 109 of the Patent Rules provides for registration of a Patent Agent. Rule 110 of the Patent Rules provides for particulars of the qualifying examination for a Patent Agent. Rule 110 of the Patent Rules is set out below:

“110. Particulars of the qualifying examination for patent agents.-(1) The qualifying examination referred to in clause (c) (ii) of sub-section (1) of section 126

shall consist of a written test and a *viva voce* examination.

(2) The qualifying examination shall consist of the following papers and marks, namely:

Paper I – Patents Act and Rules

Paper II – Drafting and interpretation of patent

Specifications and other documents

Viva Voce

(3) A candidate shall be required to secure a minimum of fifty marks in paper I and Paper II and shall be declared to have passed the examination only, if he obtains an aggregate of sixty per cent of the total marks.”

16. It is seen from the above that Rule 110 of the Patent Rules provides that the qualifying exam shall consist of two papers and a viva-voce test. It also indicates the marks allocated and the marks required to be secured by the examinee. However, the said Rule does not contain any other provisions as to how the exam would be conducted. The Patent Rules do not provide for; the structure of the papers; the frequency of the exams; the method of marking; and whether the exams would be objective or subjective etc. All such details as to how the qualifying exam is to be conducted are plainly at the discretion of the Executive Agency – The Controller General of Patents Designs and Trade Marks (hereafter ‘CGPDTM’).

17. The Minutes of the Meeting held on 04.07.2016 (which were handed over by the learned counsel for the respondents) indicate that the

meeting was held in the office of the CGPDTM and was also attended by (i) the CGPDTM; (ii) Head of Office of CGPDTM; (iii) Deputy Controller of Patent & Designs; and (iv) Examiner of Patent and Designs. The said officers deliberated upon the holding of the Examination and finalized a tentative timeline for holding such examination including date of advertisement, commencement of registration, closure of registration, issue of admit cards, date of examination, date of *viva-voce* etc. They further determined the structure of Paper-I and Paper-II as well as level of difficulty of the questions. The said officials also decided the policy for checking of answer sheets. Paragraph 7 of the minutes of the said meeting is relevant and is set out below:

(7.) Checking of answersheets

- (a) All the persons who will examine the answer sheets will be called for a meeting before starting the process of evaluation. The purpose and intent of each subjective question and what to reasonably expect from the candidate will be explained to them in detail.
- (b) A policy not to re-check the answer sheets of the Patent Agent Examination but to re-calculate the marks obtained will be followed on receiving the request for re-evaluation / re-checking / re-totalling for a maximum period of 01 month after the announcement of the result. The committee may accordingly decide.”

18. A Board was also constituted for rendering advice in connection with the conduct of the Examination. At the meeting held on 22.09.2016, the said Board, *inter alia*, decided as under:

“11. A policy not to re-check the answer sheets of the Patent Agent Examination but to retotal the marks obtained will be followed on receiving the request for re-evaluation re-checking re-totalling for examination period of one month or its the controller may think appropriate after the announcement of the result for written examination and before date of viva voce. Any miscellaneous case may be considered upon by the CGPDM. While evaluating the answer sheets & awarding marks for viva-voce policy adopted that fraction of marks shall be avoided.”

19. In view of the above, it cannot be disputed that the respondents have adopted a policy not to permit reassessment of the answer sheets. The contention that the said minutes and the policy are of no relevance, is unmerited. Section 126(1)(c)(ii) of the Patent Act expressly provides that for a person to qualify as a Patent Agent, he / she should have passed a qualifying examination prescribed for the said purpose. The particulars of the qualifying examination are specified in Rule 110 of the Patent Rules quoted above. As far as procedure for conducting the Examination and evaluating the answers is concerned, no rules have been framed. However, that does not mean that the decision of the CGPD TM in this regard is of no relevance. Clearly, it is not feasible for the Patent Rules to prescribe all details. It is trite law that the executive can always fill up the gaps in legislation. In the present case, the Executing Agency (CGPD TM) would have full discretion to adopt a procedure in conformity with the Patent Rules for conduct of the Examination in question. The contention that such policy is of no relevance and must be ignored is, thus, fundamentally flawed.

20. In view of the specific policy of the respondents not to permit re-evaluation, the petitioner's request to the aforesaid effect cannot be acceded to. In the case of **Pramod Kumar Srivastava** (*supra*), the Supreme Court had authoritatively held that in absence of any provision for re-evaluation of the answer sheets, an examinee would have no right to seek re-evaluation of his/her marks. Paragraph 7 of the said decision is set out below:

“7. We have heard the appellant (writ petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation 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 answer 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 this 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 re-evaluation of his marks. This question was examined in considerable details in *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh kumar Sheth*. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the

students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated.”

21. A plain reading of the decision of the Supreme Court in ***Ran Vijay Singh*** (supra) clearly indicates that the court had reaffirmed its earlier decisions including in ***Pramod Kumar Srivastava*** and reiterated the principles set out therein. It does appear from Paragraph 30.2 of ***Ran Vijay Singh & Ors*** (supra) that in certain cases, the court may permit re-evaluation or scrutiny of an answer sheet. However, this is permissible only in rare and exceptional cases and only where the Statute, Rules and Regulations do not prohibit it. In the present case, the policy adopted by the CGPDTM for conduct of the Examination, clearly prohibits re-evaluation / reassessment of answer sheets.

22. In view of the above, this Court is unable to accede to the relief as sought for by the petitioner.

23. The petition and the pending application are, accordingly, disposed of.

VIBHU BAKHRU, J

SEPTEMBER 13, 2018
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