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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 9741/2019

Date of decision: 25 September 2019

NITESH KUMAR ANAND

..... Petitioner

Through : Mr. Sunil Mittal, Sr. Adv. with
Mr. Rajiv Thukral and Mr. Sangeeta
Dass, Advs.

versus

UNIVERSITY OF DELHI AND ORS.

..... Respondents

Through : Mr. Mohinder J.S. Rupal, Mr. Hardik
Rupal, Mr. Prang Newmai,
Mr. Kousik Ghosh and Ms. Aditi
Shastri, Advs. for University of
Delhi.
Mr. T. Singhdev and Ms. Arunima
Pal, Advs. for R-3/MCI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL):

1. On 11.09.2019, after hearing learned counsel for the parties at some length, I had made the following observations :

"2. Apart from anything else, what is curious and completely unexplained at least at this stage, is the contradiction between the contents of the opening sheet of the written test taken by the petitioner in respect of Paper No.IV (Surgery – II) and what is apparent from a visual examination of the answer sheet enclosed therewith.

2.1 The opening sheet adverts to marks which add up to 9 (nine) whereas a perusal of the answer sheet would show that no marks have been allotted by the examiner against answers set forth therein.

3. The impugned order of the University of Delhi, which is,

dated 14.08.2019, inter alia, states as follows :

“Part-IV Surgery-II Part-D Questions had been checked properly and marks have been added on the inside now – NO CHANGES TO THE MARKS.”

3.1 Thus, as is apparent, even according to the University of Delhi, no marks had been allocated by the examiner when the answer sheet of the petitioner was evaluated in the first instance.

4 Mr. Mohinder J.S. Rupal, Advocate, who appears on behalf of the University of Delhi, says that he will revert with instructions in the matter.

5. Apart from anything else, Mr. Rupal will also obtain instructions as to whether the University of Delhi will be willing to have the paper, in issue, evaluated afresh by an independent examiner.

6. Mr. Sunil Mittal, learned senior counsel, who appears on behalf of the petitioner, says that he does not wish to press any other aspect in the instant petition.

7. Renotify the matter on 25.09.2019.”

2. Since then, the University of Delhi has filed a counter affidavit in the petition which has been placed on record by Mr. Rupal. As would be evident from the proceedings of 11.09.2019, the issue which arises for consideration in this case is as to whether in the given facts and circumstances, there was an evaluation of the concerned paper; reference to which is made in paragraph 3 of the order dated 11.09.2019.

3. The University of Delhi in its counter affidavit to my utter surprise, incredulously takes the following stand to defend, what is, to my mind, a completely indefensible conduct of the examiner :

*“8. In fact as in the present case, even the answer sheet of Part-C of Surgery-II paper was checked by one examiner while the answer sheet of Part D Surgery-II answer sheet was checked by another examiner. **It is normal practice of some examiners to award the marks only on the front page of the answer sheet and not inside the answer sheet corresponding to each answer. However, in case any student has any grievance that his answer sheet does not have marks***

corresponding to each answer then in such case the University sends the answer sheet back to the examiner for consideration by the same examiner.”

(emphasis is mine)

4. Mr. Rupal says that when the petitioner brought to the notice of the University of Delhi that the concerned subject paper did not show that the questions and answers given against them had been checked and that only the front sheet contained the marks, the matter was referred to the Director (Department of Surgery), Maulana Azad Medical College (hereafter referred to as “Director, MAMC”).

4.1 Notably, the petitioner’s concerns were referred by the Deputy Director (Examinations) of the University of Delhi to Director, MAMC vide communication dated 05.08.2019 based on the request made by the petitioner on the same date i.e. 05.08.2019.

5. The Director, MAMC, it appears wrote back on 08.08.2019 to the Deputy Director (Examinations) that the paper had been checked properly and that the marks had been added “now” in the inside sheets of the subject paper and, therefore, there was no change in the marks accorded to the petitioner.

6. Mr. Rupal says that this procedure of examining answer sheets is perfectly in order.

7. On the other hand, Mr. T. Singhdev, Advocate, who appears on behalf of the MCI, submits that in the given facts and circumstances of the case, what had been observed by this court on 11.09.2019 would be the more robust and/or appropriate method of moving forward in the matter.

7.1. In other words, Mr. Singhdev’s submission is that the concerned answer sheet should have been evaluated by an independent examiner to eschew likelihood of bias and not by the same examiner who had committed the error.

8. I must also indicate that I had queried Mr. Rupal as to whether there was any policy put in place which stipulated that if such a situation, as the one which had arisen in the present case, were to arise, the answer sheet(s) would be evaluated by the same examiner who committed the error.

8.1. Mr. Rupal, in this behalf has drawn my attention to Clause 3 of the notification dated 01.11.2011 which reads as follows :

“3. Rechecking is done instead of revaluation for examinations conducted by the University for the Professional Courses such as LL.B.”

9. A plain reading of the aforesaid clause would show that while it allows the rechecking, it does not allow for reevaluation. That being said, there is nothing stated in Clause 3 which stipulates that rechecking has to be done by the same examiner who committed the error.

10. Mr. Rupal says that if this court were to direct examination of the concerned answer sheet by an independent examiner, it would amount to re-evaluation. To my mind, there is a fallacy in this argument. This is a case which depicts that there was no examination of the concerned paper in the first instance and all that the examiner had done was to insert the marks against each question in the opening sheet, and therefore, in my view, the judgment of the Supreme Court, which has been relied upon by Mr. Rupal in fact favours the petitioner. The relevant extract of the judgment rendered in ***Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors.***, on which reliance has been placed by Mr. Rupal is set forth hereafter :

“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 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. ...”

(emphasis is mine)

11. A perusal of the aforesaid extract of the judgment would show that the court stressed upon the fact that the scrutiny of the answer sheets was carried out to ascertain whether all the answers given by the candidate had been examined and that whether there had been a mistake in the totalling of marks relatable to each question and in noting them correctly on the first cover page of the answer book.

12. As indicated hereinabove, this is a case where evidently none of the answers were examined and all that the examiner had done was to insert marks in the opening sheet.

13. I am thus, unable to persuade myself that approach adopted by the University of Delhi is correct. I tend to agree with the submissions of Mr. Singhdev that the concerned examination paper needs to be examined by an independent evaluator. There is without doubt a tendency on the part of a person be it an examiner or anyone else who has made a mistake to justify his approach which is found fault with. Moreover, even if I were to assume that the marks now entered in the inside sheets of the concerned examination paper are correct, the petitioner will carry a lingering doubt as to the examiner's objectivity in the matter. The test, in my opinion, is not whether the examiner, in point of fact, displayed objectivity, the test which ought to be applied is whether the petitioner in these circumstances would carry the impression that the examiner would be unable to display objectivity.

14. Thus, the writ petition is disposed of with a direction to the University of Delhi to have the concerned paper examined by an independent examiner

other than the one, who examined the concerned sheet, after blocking the marks which are already mentioned in the answer sheet.

15. The needful will be done by the University of Delhi at the earliest, but not later than three weeks from today.

16. Once the answer sheet is examined by an independent examiner, the result will be indicated to the petitioner within three days of such examination followed by all consequential steps that are required to be taken thereafter.

17. The captioned writ petition is disposed of in the aforesaid terms.

18. *Dasti.*

RAJIV SHAKDHER, J

SEPTEMBER 25, 2019

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