

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WA No. 626 of 2019

(Arising out of order dated 20/11/2019 passed by learned Single Judge in WPC No. 4169 of 2019)

- Dipendra Kumar S/o Mani Shanker Sahu, aged about 18 years R/o Qtr. No. G-102, Shivam Vihar Colony Bilaspur C.G.

---- Appellant

Versus

1. State of Chhattisgarh through- Principal Secretary, Department of School Education, Mahanadi Bhawan, Naya Raipur Dist. Raipur C.G.
2. Chairman, Board of Secondary Education, Vivekanand Nagar, Janta Colony, Raipur, Chhattisgarh
3. Secretary, Board of Secondary Education, Vivekanand Nagar, Janta Colony, Raipur Chhattisgarh
4. Union of India, through- Secretary, Department of Higher Education, Ministry of Human Resource Development, Government of India, Shashtri Bhawan, New Delhi 110001
5. Chairperson, National Testing Agency, C-20 1A/8, Sector 62, IITK Outreach Centre, Noida 201309

-----Respondents

For Appellant	:	Ms. Aditi Singhvi, Advocate.
For Respondent No. 1-State	:	Mr. Ghanshyam Patel, Govt. Advocate.
For Respondent No. 2 & 3	:	Mr. Animesh Tiwari, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

Per Parth Prateem Sahu, J

03/01/2020

1. Challenge in this appeal is to the order dated 20-11-2019 passed in WPC No. 4169/2019 whereby the writ petition filed by the petitioner/ appellant challenging Clause 5 of the notification dated 22-04-2019 Annexure P-1 in the writ petition, was dismissed.
2. The relevant facts of the case are that the appellant appeared in class 12th examination for the academic year 2018-19, final examination of which took place in the year 2019 and the Chhattisgarh Board of Secondary Education-respondent No. 3 issued marksheets vide Annexure P-3 in which appellant

secured 364 marks out of 500 and he being dissatisfied with the award of marks had applied for re-evaluation of marks of all his subjects. On re-evaluation, after examining the answer sheet by two different evaluators, some additional marks have been given which have been shown in the photocopy of the answer sheet supplied to him, but the final result could not be changed on account of clause 5 of the notification bearing No. 3211/ पुनर्गणना प्रकोष्ठ/2019 dated 22-04-2019 which provides that increase of the marks shall be done, only if the average of the marks awarded by them is 10% or more than the marks actually secured by the candidate. The appellant/petitioner in the writ petition provided a table showing additional marks after re-evaluation by the evaluators i.e. 02 marks in Hindi subject, 05 marks in English, 03 marks in Chemistry and 04 marks in Physics. But in view of the Gazette notification published on 27-04-2013 with regard to the re-evaluation in Chhattisgarh Madhyamik Siksha Mandal, the marks of English and Chemistry have not been changed in the marksheet issued to the appellant, this made the appellant to file writ petition with following prayers:

“ i. That this Hon'ble Court may kindly be pleased to quash the provision No. 05, order dated 22.04.2019, bearing No. 3211/ पुनर्गणना प्रकोष्ठ/2019 published in the Gazette on 27.04.2013 to the extent that only 10% or more of the marks obtained would be increases, as being arbitrary and unreasonable.

ii. That, this Hon'ble court may kindly be pleased to direct the respondent Board to make changes in the marks of the petitioner as increased in the revaluation.

iii. That this Hon'ble Court may kindly be pleased to direct the respondent Board to get the answer-sheet for English Subject re-evaluated by two re-evaluators, as per the Regulations and provisions made thereunder.

iv. Any other relief, which this Hon'ble Court deems, fit in the facts and circumstances may also be granted in favour of the petitioner.”

3. The learned Single Judge upon hearing the respective counsels for the parties therein, dismissed the writ petition taking note of the earlier judgment passed by the Division Bench of this Court and also observing the second ground raised by the learned counsel for the petitioner/ appellant and left that ground open for the petitioner to make appropriate representation to respondent No. 2 & 3 for its consideration and dismissed the writ petition.
4. Learned counsel for the appellant submits that the learned Single Judge committed error in applying “doctrine of approbation and reprobation” by placing reliance on judgment passed by the Supreme Court in the matter of **Bhau Ram v. Baij Nath Singh** reported in **AIR 1961 SC 1327**, she also submits that the appellant is a brilliant student and secured more than 93 percentile in Joint Entrance Exams (JEE) conducted by National Testing Agency (NTA) for admissions in IIT and NITs, but looking to the minimum cut-off marks fixed by these institution, a candidate has to obtain a minimum of 75% marks in class 12th examination apart from qualifying the JEE examination. The appellant is being deprived of getting admission in IIT or NITs due to arbitrary action on the part of respondent 2 & 3 in not adding additional marks after re-evaluation of answer sheets as he, at present, is having less than 75% of marks which will effect the career of the appellant adversely.
5. Per contra, learned counsel representing respondent No. 2 & 3 submits that the notification dated 27-04-2013 is issued under the regulation 119 and 148 of the Regulations of Board of Secondary Education. He further submits that the appellant cannot claim the award of increased marks after re-evaluation as a matter of right but it is governed within the rules/ regulations framed by the State Board and the notification, if any, issued by the appropriate Government for conducting re-evaluation of the answer-sheet of the candidate. It is also submitted that the learned counsel for the appellant could not make out a ground for interfering the notification dated 27-04-2013 and the learned Single

Judge has passed the impugned order after taking into consideration the earlier judgment passed by a Co-ordinate Division Bench of this Court in WPC No. 2352/2015.

6. We have heard learned counsel for the respective parties and perused the records.
7. Perusal of regulations of Chhattisgarh Board of Secondary Education which however, prescribe for scrutiny of marks in regulation 119 for main examination and 148 for supplementary examination and subsequently by way of this notification, the provision of re-evaluation has been brought into and at the same time to save the Government from misuse of the notification for re-evaluation of the examination papers, the cut-off marks have been fixed which have to be secured on re-evaluation to get the result changed/ amended. The notification issued on 27-04-2013 came for consideration before the Division Bench of this Court in the matter of **Rahul Chandrakar v. State of Chhattisgarh and another** passed in WPC No. 2352/2015 and the Division Bench dismissed the writ petition and held thus:

“3. The Division Bench of this Court in the case of Rahul Chandrakar Vs. State of Chhattisgarh & Another in WPC No.2352 of 2015 vide its judgment dated 04.01.2016 where a similar issued was raised has held as under :-

'2. x x x x x

3. Learned Advocate General submitted that the Petitioner applied for re-evaluation under the Notification dated 1.4.2013 and the procedure prescribed under the same. No allegations have been made against the two re-evaluators. The fairness on part of the Respondents is evident from the fact that the marks have been enhanced. But if the enhancement of marks by the two evaluators did not increase by 10%, no new mark-sheet could be issued under the notification dated 1.4.2013. The Petitioner cannot be permitted to approbate and reprobate by accepting the notification dated 1.4.2013, applying for re-evaluation under the same, and then turn around and challenge the notification itself.' ”

8. Similar view has also taken by this Court in the matter of **Ku. Sandhya Kaushik v. State of Chhattisgarh and others** in WPC No. 2603/2016 decided on 09-03-2017. The issue as projected by the learned counsel for the petitioner has already been considered and decided by the Co-ordinate Bench of this Court and we are in agreement with the view taken by the Division Bench of this Court in case of **Rahul Chandrakar (supra)**.

9. The Hon'ble Supreme Court in the matter of **Maharashtra State Board of Secondary and Higher Secondary and another v. Paritosh Bhupeshkumar Sheth and others** reported in (1984) 4 SCC 27 and held thus:

“14. ... It would be wholly wrong for the Court to substitute its own opinion for that of the Legislature or its delegate as to what principle or policy would best serve and objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. 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. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the statute. ...”

16. ... The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. None of these vitiating factors are shown to exist in the present case.

21. The legal position is now well-established that even a bye-law cannot be struck down by the Court on the ground of unreasonableness merely because the Court thinks that it goes further than “is necessary” or that it does not incorporate certain provisions which, in the opinion of the Court, would have been fair and wholesome. The Court cannot say that a bye-law is unreasonable merely because the Judges do not approve of it. Unless it can be said that a bye-law is manifestly unjust, capricious, inequitable, or partial in its operation, it cannot be invalidated by the Court on the ground of unreasonableness. The responsible representative body entrusted with the power to make bye-laws must ordinarily be presumed to know what is necessary, reasonable, just and fair. ...”

Learned counsel for appellant could not make out any valid ground to quash the notification under challenge. It cannot be quashed merely on asking or it is inconvenient to someone like appellant for quashing any notification. A strong case is to be made out that the notification is beyond the jurisdiction of the authority, or in-violation of any of limitation imposed by the Constitution or is inconsistent with any provision of law. Nothing has been argued by the learned counsel in this regard.

10. The learned Single Judge while dismissing the writ petition has already granted liberty to the petitioner to approach the authorities for redressing his grievance that his one of the papers i.e. English was not examined by two evaluators but it was examined only by one which is contrary to the notification dated 27-04-2013 and to file representation/ objection before respondent No. 2 & 3.

11. In view of the aforementioned discussions and also in the light of the law laid down by the Supreme Court, we do not find any merit in the submissions made by the learned counsel for the appellant. The appeal being devoid of any substance which is liable to be and is hereby dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge