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W.P. (IPD) No.26 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM

**THE HONOURABLE MR.JUSTICE SENTHILKUMAR
RAMAMOORTHY**

W.P. (IPD) No.26 of 2023

Savari Prema Selvam

...Petitioner

Vs.

Controller General of Patents,
Designs & Trade Marks (CGPDTM),
Intellectual Property of India,
Boudhik Sampada Bhavan,
Antop Hill, S.M. Road,
Mumbai – 400037.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of *mandamus* to direct the respondent to re-evaluate the petitioner's answer booklet dated 07.05.2023 bearing Applicant ID: 23011179 in Booklet No.4513 for the Patent Agent Examination, 2023 conducted in Paper-II.

For Petitioner : Ms.Shabnam Banu

**ORDER**

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The petitioner seeks a writ of mandamus for the revaluation of the petitioner's answer booklet dated 07.05.2023 for Paper-II bearing Application ID No.23011179 in booklet No.4513 for the Patent Agent Examination, 2023.

2. The petitioner states that the Patent Agent Examination was conducted on 07.05.2023 and that the said examination consists of two papers and a Viva Voce. Out of the two papers, Paper-I is an objective type paper and Paper-II is a subjective type paper. In addition, the Viva Voce carries 50 marks. The petitioner further states that the results of the examination were announced on 10.06.2023. The petitioner was informed that she secured 71 marks in Paper-I and 46 marks in Paper-II. In those circumstances, the petitioner applied for the answer booklet for Paper-II by also submitting an application to the Public Information Officer under the Right to Information Act, 2005. Since the original authority disposed of the application without providing the answer booklet, the petitioner filed an appeal. Such appeal was allowed on 14.08.2023 and the petitioner was provided with the answer booklet. Upon examining the answer booklet, the petitioner noticed a totalling error and therefore sent a



representation dated 16.08.2023 requesting for re-totalling and revaluation of Paper-II. By reply dated 18.08.2023, the petitioner was informed that she had secured 49 marks in Paper-II.

3. On the ground that the 1st page of the answer booklet contained the numeral 1 on the margin indicating 1 mark, the petitioner made further representations in such regard. In response, the petitioner was informed that she had secured 49 marks even after re-totalling.

4. The petitioner asserts that the evaluation of and marks awarded for the answers to certain questions, especially those set out at Serial Nos.5 to 7 of the table at paragraph 13 of the affidavit in support of the writ petition, are arbitrary. The present writ petition was filed in these facts and circumstances.

5. Learned counsel for the petitioner invited my attention to the answer booklet and pointed out that the evaluator sheet at page 42 of the typed set provides clear evidence that a totalling error was committed. By further referring to the 1st page of the answer booklet, learned counsel pointed out that 1 mark has been written on the margin of the 1st page thereof. Learned counsel



further submits that the marks awarded in respect of the answers to questions listed at Serial Nos.5 to 7 clearly evidence arbitrariness.

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6. Especially in the context of the relevant rules not permitting re-evaluation, learned counsel submits that examiners are under an obligation to carry out evaluation carefully and cautiously. The judgment of the Hon'ble Supreme Court in *President, Board of Secondary Education, Orissa and another v. D.Suvankar and another*, (2007) 1 SCC 603, particularly paragraph 6 thereof is cited in support of this contention. Therefore, learned counsel contends that a mandamus should be issued for revaluation.

7. In matters of this nature, it is a sacrosanct principle that the rules of the game should not be changed midway especially at the instance of one of the individuals who participated on the basis of such rules. Put differently, all the candidates take the examination on the basis of a set of rules which are made applicable to such candidates and these rules, if changed midway at the instance of one individual, could unfairly prejudice other candidates. The admitted position is that re-totalling is permissible but revaluation is not. After requesting for and obtaining the answer booklet, the petitioner pointed out a



totalling error and such totalling error was rectified. The petitioner proceeded to assert that the mark or symbol (which appears like the numeral 1) contained on the margin of the 1st page of the answer booklet of Paper-II denoted the awarding of 1 mark. This assertion was denied by the respondent. In addition, the petitioner asserted that the marks awarded to the answers to three questions were arbitrary. In exercise of jurisdiction under Article 226 of the Constitution, this Court does not sit in appeal over decisions taken by the examiner. As regards answers provided to questions, interference would be warranted only in the small category of cases where the error is manifest on the face of the record. This case clearly does not fall within such category and, therefore, I decline to exercise discretionary jurisdiction.

8. For reasons set out above, W.P. (IPD) No.26 of 2023 is dismissed without any order as to costs.

27.09.2023

Index: Yes
Speaking order
Neutral Citation: Yes
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To

The Controller General of Patents,
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Intellectual Property of India,
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Antop Hill, S.M. Road,
Mumbai – 400037.

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SENTHILKUMAR RAMAMOORTHY,J.

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