

SUPREME COURT OF INDIA

Secy.,A.I.Pre-Med/Pre-Den.E.E.CBSE

Vs.

Khushboo Srivastava & Ors.

C.A.No.7024 of 2011

(R.V.Raveendran and A.K.Patnaik,JJ.,)

17.08.2011

ORDER

A.K.Patnaik,J.,

SLP(Civil)No.10600 of 2009

1. Leave granted.

2. This is an appeal against the judgment dated 06.02.2009 of the Division Bench of the Patna High Court in Letters Patent Appeal No.984 of 2008 (for short `the LPA').

3. The facts very briefly are that the respondent No.1 appeared in the All India Pre-Medical/Pre-Dental Entrance Examination, 2007 conducted by the Central Board of Secondary Education (for short `the CBSE'). She submitted a representation dated 07.06.2007 through her advocate to the CBSE for re-examination and re-totalling of her marks in Physics, Chemistry and Biology. The CBSE informed the advocate of respondent No.1 by letter dated 02.07.2007 that there was no provision for re-checking/re-evaluation of answer sheets of the candidates. Aggrieved, the respondent No.1 and others filed writ petition, C.W.J.C. No.7631 of 2007, in the Patna High Court under Article 226 of the Constitution for directing the CBSE to conduct a re-evaluation of her answer sheets and to re-total the marks and publish the result. The CBSE filed a reply contending inter alia that under the examination bye-laws pertaining to the All India Pre-Medical/Pre-Dental Entrance Examination, there was no provision for re-evaluation. The learned Single Judge of the Patna High Court, who heard the writ petition, passed orders directing the CBSE to produce the answer sheets of respondent No.1 on the condition that respondent No.1 would deposit Rs.25,000/- to prove her bonafide that her answer sheets were wrongly evaluated. The respondent No.1 deposited the amount of Rs.25,000/- and her answer sheets relating to Physics, Chemistry and Biology as well as the model answers were produced by the CBSE before the High Court. The learned Single Judge compared the answers of the respondent no.1 with the model answers and held in his order dated 20.10.2008 that the answers of respondent No.1 to question No.3(e) in the Botany paper and question No.20(a)-iii in

Chemistry were correct but she was not given marks for her answers to the two questions. The learned Single Judge was of the view that if the answer sheets of respondent No.1 were correctly evaluated she would have got two more marks. The learned Single Judge, however, held that the seats for the Pre-Medical Course on the basis of the All India Pre-Medical/Pre-Dental Entrance Examination, 2007 were already allotted to the successful candidates and the successful candidates had completed one year study and there was no interim order reserving any seat for respondent No.1 and therefore no relief could be granted to the respondent No.1 except directing refund of the amount of Rs.25,000/- deposited by her.

4. The respondent No.1 then filed the LPA before the Division Bench of the Patna High Court and contended that the learned Single Judge after having held that she was entitled to two more marks and also to admission in the MBBS Course should have directed the appellants to admit the respondent No.1 in the next academic session. The appellants, on the other hand, submitted opinions dated 10.02.2008 and 15.02.2008 of two experts which had not been placed before the learned Single Judge and contended that the findings of the learned Single Judge are not correct. The Division Bench of the High Court considered the opinions of the two experts and yet concurred with the findings of the learned Single Judge that two of the answers of respondent No.1 had not been correctly evaluated and that she was entitled to two more marks. The Division Bench of the High Court took note of the fact that respondent No.1 had approached the Court within eight days of the publication of the result and held that she was not to be blamed for the delay in disposing of the writ petition and hence relief should not be denied to the respondent No.1 only on the ground of lapse time. The Division Bench of the High Court therefore moulded the relief and directed that respondent No.1 be admitted in the MBBS Course in the next academic session 2009-2010.

5. Learned counsel for the appellants submitted that it is now well-settled in a series of decisions of this Court that in the absence of any provision in the relevant rules providing for re-examination or re-evaluation of answer sheets of a candidate in an examination, the Court cannot direct such re-examination or re-evaluation. He relied on the decisions of this Court in *Maharashtra State Board of Secondary and Higher Secondary Education & Anr. v. Paritosh Bhupeshkumar Sheth & Ors*¹. *Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors*². and *Secretary, W.B. Council of Higher Secondary Education v. Ayan & Ors*³. He further submitted that the High Court in exercise of its power under Article 226 of the Constitution could not substitute its own evaluation of the answers of a candidate for that of the examiner and in the present case the High Court has exceeded its power of judicial review under Article 226 of the Constitution.

6. Learned counsel for the respondents, on the other hand, supported the impugned judgment of the Division Bench of the High Court and submitted that the respondent no.1 was entitled to two additional marks for her two answers in Chemistry and Botany as found by the High Court in the impugned judgment and if these two marks were added to her total marks, she was entitled to admission to the MBBS Course as per her merit in the merit list. He, however, submitted that on account of the interim order passed by this Court staying the impugned

judgment, the respondent no.1 was not admitted pursuant to the impugned judgment of the High Court, but she got admission in MBBS Course subsequently.

7. We find that a three-Judge Bench of this Court in *Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors.* (supra) has clearly held relying on *Maharashtra State Board of Secondary and Higher Secondary Education & Anr. v. Paritosh Bhupeshkumar Sheth & Ors.* (supra) that in the absence of any provision for the re-evaluation of answers books in the relevant rules, no candidate in an examination has any right to claim or ask for re-evaluation of his marks. The decision in *Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors.* (supra) was followed by another three-Judge Bench of this Court in *Board of Secondary Education v. Pravas Ranjan Panda & Anr.*⁴ in which the direction of the High Court for re-evaluation of answers books of all the examinees securing 90% or above marks was held to be unsustainable in law because the regulations of the Board of Secondary Education, Orissa, which conducted the examination, did not make any provision for re-evaluation of answers books in the rules.

8. In the present case, the bye-laws of the All India Pre-Medical/Pre-Dental Entrance Examination, 2007 conducted by the CBSE did not provide for re-examination or re-evaluation of answers sheets. Hence, the appellants could not have allowed such re-examination or re-evaluation on the representation of the respondent no.1 and accordingly rejected the representation of the respondent no.1 for re-examination/re-evaluation of her answers sheets. The respondent no.1, however, approached the High Court and the learned Single Judge of the High Court directed production of answer sheets on the respondent no.1 depositing a sum of Rs.25,000/- and when the answer sheets were produced, the learned Single Judge himself compared the answers of the respondent no.1 with the model answers produced by the CBSE and awarded two marks for answers given by the respondent no.1 in the Chemistry and Botany, but declined to grant any relief to the respondent no.1. When respondent no.1 filed the LPA before the Division Bench of the High Court, the Division Bench also examined the two answers of the respondent no.1 in Chemistry and Botany and agreed with the findings of the learned Single Judge that the respondent no.1 deserved two additional marks for the two answers. In our considered opinion, neither the learned Single Judge nor the Division Bench of the High Court could have substituted his/its own views for that of the examiners and awarded two additional marks to the respondent no.1 for the two answers in exercise of powers of judicial review under Article 226 of the Constitution as these are purely academic matters. This Court in *Maharashtra State Board of Secondary and Higher Secondary Education & Anr. v. Paritosh Bhupeshkumar Sheth & Ors.* (supra) has observed :

".... As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this

nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. ..."

9. We, therefore, allow the appeal, set aside the impugned judgment of the learned Single Judge and the Division Bench of the High Court and dismiss the writ petition. There shall be no order as to costs. We are informed that the first respondent was admitted to the MBBS Course subsequently. If so, her admission in the MBBS Course will not be affected.

Judgment Referred.

¹(1984) 4 SCC 0027

²(2004) 6 SCC 0714

³(2007) 8 SCC 0242

⁴(2004) 13 SCC 0383