

RAJASTHAN HIGH COURT

Om Dutt Bohra

Vs.

Board of Secondary Education

S.B. Civil Writ Petition No. 4085 of 2004

(Dinesh Maheshwari, J.)

14.02.2006

ORDER

Dinesh Maheshwari, J.

1. This Court is constrained to observe at the outset that the only fault that could be attributed to the ward of the petitioner necessitating this writ petition is that he excelled in the studies and secured better marks.
2. The petitioner has prayed for direction to the respondents for issuance of fresh corrected marks sheet of Secondary School Examination for his son Dixit Dutt Bohra in the circumstances narrated hereafter.
3. Dixit Dutt Bohra appeared in Secondary School Examination 2004 while studying at the respondent No. 2 School, Navin Adarsh, Vidya Mandir, Ram Chowk, Inside Nagori Gate, Jodhpur. Another student named Dinesh Pareek was also studying at the same School and appeared in the same examination. As per the system of assessment, it appears that 10% of the marks are provided for the sessionals and are supplied by the School concerned on the basis of the marks obtained by a student in the Half-yearly examination by the School.
4. It is not in dispute that while forwarding the sessional marks obtained by the respective students to the respondent No. 1, Board of Secondary Education, the respondent No. 2 School committed a grave mistake qua Dixit Dutt Bohra and Dinesh Pareek, who were allotted respective Roll Nos. 4688499 and 4688498, inasmuch as their marks were interchanged. The result of said Secondary School Examination was declared on 25.06.2004 and according to the petitioner, his son's marks sheet was received on 10.07.2004; and upon noticing the discrepancy in the sessionals marks, he approached the School authorities who admitted their mistake and addressed a communication to the respondent No. 1 Board alongwith original Marks Sheets of both the students for carrying out necessary corrections. A copy of the said

communication has been placed on record as Annexure-1, which bears no date but appears to have been sent only on 02.08.2004. The communication (Annexure 1) addressed by the School to the Board reads thus :-

mi;ZqDr fo"k;kUrxZr fuosnu gS fd ek;/fed ijh{kk 2004 l=kadksa Hkstus esa =qfV gks x;h gS A Nk= ukekad 46] 88] 498 o 46] 88] 499 ds l=kad vkil esa ij & uhps fy[kdj Hkst fn;s Fks A vr% vkils fuosnu gS fd blesa lalks/ku djokdj vuqxfgr djsa

l=kad Hkstus x;s xyr

ukekad	fgUnha	vaxzsth	foKku	lkek-foKku	xf.kr	laLd'r
46] 88] 498	08	07	08	09	07	09
46] 88] 499	07	05	07	07	04	05

l=kad Hksts Fks A lgh

ukekad	fgUnha	vaxzsth	foKku	lkek-foKku	xf.kr	laLd'r
46] 88] 498	07	05	07	07	04	05
46] 88] 499	08	07	08	09	07	09

The aforesaid communication (Annexure 1) was replied by the respondent No. 1 Board on 13.08.2004 in the manner that the last date for sending the originals along with the correction fees at the rate of Rs. 50/- per subject was 24.07.2004 that had expired and the matter having not been presented within the prescribed time could not be considered. The communication dated 13.08.2004 (Annexure 3) from the respondent No. 1 Board addressed to the Principal of respondent No. 2 School reads thus :-

vkids i=kad & u-vk-fo-ea-@2004&2005 fnukad 2&8&04 ds lanHkZ esa

lwpuKfKZ ys[k gS fd ek;/fed ijh{kk 2004 ds Nk= ukekadu & 4688498 o 4688499 ds l=kad dk;Zy; dk Hkustus esa =qfV gqbZ gS A l=kadksa esa la'kks/ku laca/kh dk;Zokgh ds fy, ewy izys[k e; l=kad la'kks/ku 'kqYd :- 50@& izfr fo"k; lfgr Hkustus dh vafre frfFk 24 tqykbZ] 2004 Fkh tks fd foxr gks pqdh gS A vkids }kjk l=kad la'kks/ku izdj.k fu/kkZfjr le;kUrxZr izLrqr ugha djus ls bl ij vc fopkj fd;k tkuk laHko ugha gS A i= ds lkFk Hksth xbZ bu ukekadksa dh ewy vadrkfydkvksa layXu dj Hkstk tk jgk gS A

5. The School, while again admitting and regretting its mistake, pointed out that it was a clerical error and one month's prescribed time was not applicable thereto; and requested for necessary corrections. The School, in its letter dated 21.08.2004 (Annexure 2) stated, *inter alia*, thus :-

l=kad Hkustus esa tks =qfV gqbZ gS ;g dk;kZy; =qfV (Clerical mistake) gS vr% blesa lq/kkj gsrq ,d ekg dk fu/kkZfjr le; lhek laca/kh fu;e ykxw ugha gksrk gS A vadrkfydk ds i"V Hkxk ij fcanq la- 8 ds vuqlkj izkIrkadksa dh iqu% x.kuk (Re-totalling) dh le;lhek ,d ekg rFkk 'kqYd izfr fo"k; 50@& gS A vr% l=kad Hkustus laca/kh =qVh dks Bhd dj gesa vuqxzfgr djkosla Hkwy ds fy, ge {kek izkFkhZ gSa A

6. The request made by the School having not been acceded to, the petitioner made a representation to the Secretary of the Board of Secondary Education narrating all the facts and pointing out that the School authorities had assured to get the necessary corrections carried out and now it has revealed that the marks sheet was sent belatedly and the Board has declined to consider the matter although the petitioner was represented by the Principal of the School that there was no such time limit; and that the harassment suffered by the ward of the petitioner was affecting his studies.

7. The representation also having failed to yield any result, the petitioner has preferred this writ petition with the submissions : (a) that the son of the petitioner was having no knowledge about the last date for sending the fees nor it was in his domain to send the fees for re-totalling or rectification because it was the mistake committed by the respondent No. 2 alone and such mistake stands at a different footing than other cases of re- totalling or rectification and, therefore, refusing of rectification was clearly illegal; (b) that the mistake was of respondent No. 2 and delay, if any, too was on their part, and the son of the petitioner cannot be made to suffer on that count; (c) that it remains the duty of the respondents to give out correct marks in the marks sheet and denial of the same is violative of the constitutional rights of the petitioner.

8. This writ petition was admitted on 04.10.2004 and in response to notice, the respondent No. 2 School has submitted its reply on 04.01.2005 specifically admitting

its mistake; and has submitted that the matter was immediately taken up with the Board for correction of the marks with the original marks sheets of both the students and that the other candidate was also not having any objection for correction in the marks. The averments, as taken by the respondent School read as under:-

"3. In reply to para Nos. 3 and 4 of the writ petition, it is most humbly submitted that the names of Dixit Dutt Bohra and Dinesh Pareek were adjacent in the list each other and due to *bonafide* and clerical mistake the sessional marks of these students were interchanged but later on with (when ?) this mistake came in the knowledge of replying respondent the correct marks were sent to the Board of Secondary Examination with the request to correct the marks obtained by both the students in the mark sheet.

6. In reply to para No. 8 of the writ petition, it is most humbly submitted that as soon as the mistake came to the knowledge of replying respondent they have immediately informed to the Board of Secondary Education for correction of the marks obtained by the Dixit Bohra and Dinesh Pareek. This correction letter was sent by hand with special messenger. The original mark sheets of both the students were sent by the replying respondent to the Board of Secondary Education, Ajmer and the other candidate is also not having objection for correction in the marks."

9. The respondent No. 1, Board of Secondary Education has come out in its reply, firstly, with the preliminary objection that if the marks are changed as prayed for, its necessary consequence would be of reduction of marks of the other candidate Dinesh Pareek who had not been joined as a party to this writ petition and, therefore, according to the respondent No. 1, no writ can be issued without imp leading and hearing the person likely to be affected detrimentally and as such the petition was incompetent. On the merits of the case, the respondent No. 1 Board has given a chronology of the events and with reference to the date of declaration of result i.e. 25.06.2004, it has been alleged that 24.07.2004 was the last date for filing application for correction but the letter was sent by the respondent No. 2 School only on 02.08.2004 and, therefore, the Board refused the correction of marks sheet on 13.08.2004 on the ground of delay. The reminder sent by the respondent No. 2 School and so also the representation made by the petitioner to the Board and to the Chief Minister have also been referred to and it has been averred that the representation was decided on 20.10.2004 again pointing out the delay in making request. It has also been stated in the reply that on 16.12.2004 appearance was put by the answering respondent Board through their Advocate who advised on 15.12.2004 that administrative action including penal action should be taken against the respondent No. 2 School and the erring Principal; and that on 06.01.2005, a letter has been issued by the respondent Board to the Director, Secondary Education, Bikaner for taking action against the

Principal. Such letter dated 06.01.2005 has been placed on record as Annexure. R/4.

10. The respondent Board, with reference to the so-called guidelines issued under the Board of Secondary Education Act, 1957 sent to Schools prior to the examination (Annexure R/3) has referred to the relevant Para 5 in the 'Special Instructions' to the School Principals and it has been contended that the answering respondent having issued such guidelines, is bound to follow the same and there being no challenge to the guidelines or to the validity of the powers exercised by the respondent Board, the petitioner is not entitled to any relief.

11. It has further been contended that the rectification of marks has not been denied on the ground of late payment of fees but has been denied on the ground of delay in sending the request and it has been reiterated that once by way of Regulation, 30 days' time has been fixed by the Board, it has to be strictly adhered to, in order to give finality to the result that is eagerly awaited by the students and the guidelines are justified in larger interest of the institution and the students in general. It has also been stated that 30 days' time has been fixed by the Board so that any correction in sessional marks, if required, may be effected before the marks sheets are issued so that further complications as having taken place in this case may be prevented.

12. It has also been averred by the Board that it was undoubtedly true that the respondent No. 2 School had committed a big mistake but, till date, to the knowledge of the answering Board, the State Government has not taken any action against the erring Principal by passing appropriate punishment order so that the same mistake may no be repeated; and lastly it has been prayed that while dismissing the writ petition, suitable directions be issued against the respondent No. 2 School and the then Principal of the School; and the Government be directed to comply with the letter dated 06.01.2005 sent by the answering respondent.

13. Learned counsel for the parties have made elaborate submissions in conformity with the stands taken in the writ petition and their respective replies. During the course of arguments, learned counsel for the petitioner had placed on record photostat of the two marks sheet dated 25.06.2004 issued of Roll No. 4688499 (Dixit Dutt Bohra) and 4688498 (Dinesh Pareek).

14. Having given a thoughtful consideration to the rival submissions and having examined the material placed on record, this Court clearly finds, as commented at the outset, that the only mistake of the son of the petitioner was of having obtained higher marks than the student placed adjacent to him; and then, of course, having requested for correction in the erroneous marks sheet issued by the Board.

15. The respondent No. 2 School has not attempted to fight shy of its mistake; and rather the School had been candid enough not only to admit its mistake but also to

make a request to the Board to carry out necessary corrections and even to repeat the request while stating regrets.

16. However, the manner in which the Board of Secondary Education has dealt with this matter leaves much to be desired. The School's was a clerical error; however, the approach of the Board has been inexplicably pedantic, perfunctory and preposterous. To start with, the request was turned down in an absolutely casual manner with reference to a time limit which, as would be seen hereafter, has no co-relation to the request at hands; then the representation endorsed by the Chief Minister was also disposed in a copy book style; and then, the matter has been sought to be represented with implausible propositions. In response to this writ petition, firstly, a hyper-technical objection has been put forward about non-impleadment of other materially affected candidate, then a reference has been made to a non-applicable clause of 30 days' time limit out of context and then a reason has been put forward that itself sounds rather queer that 30 days' time *after* declaration of result (and issuance of marks sheet) was provided *so that* corrections could be carried out *before* marks sheet are issued so as to avoid complication !

17. Furthermore, it has been suggested before this Court that even the proceedings against the erring Principal have been taken up only after appearance was put in this writ petition by the Board; and to cap it all, a strange prayer has been made in the reply for directing the State Government to take action against the erring Principal in pursuance of the letter dated 06.01.2005, addressed by the Board only after being required to answer this writ petition. The approach of the Board of Secondary Education, entrusted with the task of the managing the adolescents, while dealing with the matter of marks of a student is rather painful to notice.

18. It remains undenied that son of the petitioner obtained marks higher than his neighbor and admittedly the marks of the two candidates in the sessionals, while being communicated by the School to the Board, got interchanged. The School admitted its mistake and made a request for carrying out necessary corrections and it appears that the original marks sheets of both the students were sent to the Board; and it has been stated by the School in its reply that the other candidate was having no objection to such correction.

19. It is at once clear that the correction or rectification that was prayed for, was not that of the marks of a particular candidate, but was specifically of the wrong indication of the marks; and such correction could only be a rectification of tabulation or scribing error and cannot be treated to be the correction of marks as such. The petitioner's son was not to be granted or awarded any marks; only the marks already obtained by him were requested to be shown correctly in the marks-sheet.

20. The Board has steadfastly taken the stand repeatedly that rectification could not

have been carried for the Board having provided for 30 days' time for correction of mistake. The Board has placed on record a copy of the guidelines as Annexure-R/3 and Para (5) of the special instruction to the School Principals has been heavily relied upon to say that 30 days' time is the upper limit and to suggest that after 30 days, even a clerical error as involved in the present case, is *fait accompli*. The Board is not correct even in construction of its own guidelines. The entire of such special instructions reads thus :-

'kkyk iz/kkuksa gsrq fo'ks" k vuqns'k %&

1- l=kad dh fjDr vks-,e-vkj- vadlqfp;k vkidks izkIr gksus ls ,d lrrkg dh vof/k esa izkIrkad Hkj dj cksMZ dk;kZy; dks jftLVMZ@LihM Mkd ls vFkok O;fDr'k% Hkstuh gS vU;Fkk ijh{kk&ifj.kke rS;kj djus esa foyECk gks ldrk gs l=kad ds vHkko esa ijh{kkFkhZ dk ijh{kk ifj.kke fcuk fdllh iwoZ lwpuk ds jksd fn;k tk,xk ftdh leLr ftEesnkjh vki Lo;a dh gksxh A d'I;k bls vfr vko';d le>saA

2- vadlqfp;k esa ;fn vadks es dksbZ =qfV ckn esa ikbZ xbZ rks 'kkyk iz/kku bl gsrq O;fDr'k% gj izdkj ls mRrjnk;h gksxsaA vr% d'I;k vad lwfp;ka cksMZ dk;kZy; dks izf"kr djus ls iwoZ muesa fy[ks izkIrkadksa dks IR;kfir dj bl izek.khdj.k ds lkFk Hksts fd mDr izkIrkad mUgksaus Lo;a us pSd dj fy;k gS vkSj os cksMZ ;kstukuq;i lgh gS A

3- Hkjh gqbZ vadlwfp;ka fHktokus gsrq vadlwfp;k esa vad Hkjus gsrq izfdz;k ds dzekad 5 dh izfdz;k viuk ysa A

4- vki }kjk cksMZ dk vad lwfp;ka izsf"kr dj nsus ds mijUr muesa vkids Lrj ij fdllh izdkj dh =qfV esa lq/kkj djus gsrq lwpuk izkIr gqbZ rks ,d xEHkhj ekeyk ekuk tk,xk rFkk bl gsrq vki iw.kZr% mRrjnk;h gksaxs rFkk bl laca/k esa vko';d foHkkxh; vuq'kklukRed dk;Zokgh djus gsrq lacaf/kr ftyk f'k{kk vf/kdkjh o funs'kd] ek;/fed f'k{kk chdkusj@funs'kd laLd'r f'k{kk t;ij dks Hkh fy[kk tkosxk ,oa foHkkx nks"kh ik;s tkus ij nks"kh O;fDr dks cksMZ ds lHkh ikfjJfed dk;ksZ ls oafpr dj fn;k tk;sxk A

5- ifj.kke ?kksf"kr gks tkus ds mijUr l=kad esa fdllh izdkj dh dksbZ n'f'V esa vk;s rks ijh{kkFkhZ ds fgr esa l=kad esa la'kks/ku ij fopkj fd;k tk ldrk gS] fdUrj bl gsrq ifj.kke ?kksf"kr gksus dh frfFk ds ,d ekg ds Hkhrj izfr ijh{kkFkhZ izfr fo'k; 50@& :i;s 'kqYd jkf'k lfr v)Zokf"kZd ijh{kk dh ewy vadlwfp;k o ewy mRrj iqLrds rFkk =qfV ds lEcU/k esa 'kkyk iz/kku dk Li"Vhdj.k] Nk= dh cksMZ }kjk iznr ewy vadrkfydk] v)zZokf"kZd vadlwfp;k o ewy mRrj iqLrds rFkk =qfV lEcU/k esa 'kkyk iz/kku dk Li"Vhdj.k] Nk= dh cksMZ }kjk iznr ewy

vadrkfydk] v)Zokf" kZd ijh{kk gsrq vkoafVr ukekadu jftLVj vkfn ewy izys[k
lfgr izdj.k 'kkyk izfrfuf/k }kjk lh/ks cksMZ dh xksiuh; 'kk[kk esa izLrqr fd;s
tkus ij vko';d IR;kiu ds ckn gh visf{kr la'kks/ku djuk IEHko gks ik,xk cksMZ
}kjk 'kkyk izfrfuf/k dks dksbZ ;k=k@nSfud HkRrk vkfn ns; ugha gksxkA

6- d'I;k vki v)Zokf" kZd ijh{kk dh IHkh fo" k;ksa dh mRrj iqLrdsa o vad lwfp;k
,d o" kZ rd 'kkyk esa vius v/khu lqjf{kr j[kas A cksMZ }kjk bl IEcU/k esa dHkh
Hkh vkdfLed fujh{k.k dj;k tk ldrk gS] d'I;k voxr gksA

21. By way of the aforesaid instructions the Board has warned the Principals that the sessional marks are required to be sent on the OMR Sheets being supplied by the Board within a week by registered/speed post or per Messenger else preparation of the result might be delayed and a candidate's result might be withheld for which the Principal would be responsible; that if any mistake would be found in the marks then the Principal would be personally responsible and hence should verify the marks and send them with the certification of having personally checked the same. Paragraph (4) gives out that after the marks sheets are sent to the Board, if any request would be received for correction of error, it would be treated to be a serious matter and would be referred to the concerned District Education Officer and the Director for disciplinary proceedings and on being found guilty, the person concerned would be debarred from all remunerative works of the Board.

22. Paragraph (5) that has been relied upon by the Board, informs that after declaration of the results, if any mistake be found in the sessional marks, it could be considered for rectification in the interest of the candidate but for this purpose within one month from the date of declaration of the result, the School representative has to present original Half-yearly marks sheets, original answer books, explanation of the Principal, original marks sheets of the Board etc. along with fees of Rs. 50/- per student per subject to the Confidential Branch of the Board and rectification could be carried out only after necessary verification.

23. A bare look at Paragraph (5) of the special instructions makes it apparent that the same has no application to the case at hands. Neither it was the request to correct the 'marks' of any student in particular nor the student requested for any correction in any 'marks' in any particular subject. It was not a case where the marks stated by the School for sessionals were sought to be revised because of any re-evaluation or re-totalling or re-assessment. The present one was clearly a case, not of correction of marks but of correction of scribing of the marks in the tabulation sheet and that could only be treated as an error owing to an accidental slip or omission or a clerical mistake. The said Para (5) cannot be used for the purpose of refusing to correct the obvious error of interchanging of marks of two candidates which has been admitted by the School and for correction thereof even the original marks sheets of both the

students were sent to the Board.

24. It is entirely different matter that with reference to the warning stated in Para (4) of the special instructions aforementioned, any proceedings could be adopted against the Principal but then it appears that even the Board did not consider it appropriate to recommend any proceedings against the Principal and remained rest contented with the count of 30 days and refusing the prayer for correction as if the marks of the students deserve no consideration beyond this. It is borne out from the reply of the Board that even the proceedings against the Principal were suggested only after the Board was required to answer this writ petition.

25. It has been repeatedly asserted in reply to the writ petition by the Board that its guidelines were required to be followed, as if such guidelines could even subjugate all the requirements of equity, justice and good conscience. As noticed hereinbefore, reference to the guidelines para (5) qua the case of the petitioner is even otherwise misplaced, but it remains a moot question as to why the same Board, relying so heavily on its guidelines, never bothered about Para (4) thereof till the time they were required to submit a reply to this petition ? The so-called proposal sent to the Director, Secondary Education on 06.01.2005 (Annexure R/4) is apparently an eye-wash intended only to obviate consideration of the real questions in controversy.

26. The Board in its reply has even attempted to supply reasons for this 30 days' time period in the following words:-

"It is further submitted that the time of 30 days has been fixed by the answering Board so that any correction in the sessional marks, if required, may be effected before the marks-sheets are issued so that further complications as have taken place in this case, may be prevented."

Apart from its hollowness, such suggestion is rather preposterous. Although, as seen hereinbefore, 30 days' time period has nothing to do with the case at hands but in any case the Board is not correct in contending that the reason behind this 30 days' time is that the correction "may be effected before the marks sheets are issued". The marks sheets are issued by the Board on the date of declaration of the result and the marks sheets of the two candidates as produced by the petitioner during the course of arguments bear the date of 25.06.2004, i.e. the date of declaration of result. Any request for correction in the marks sheet, by its very nature, could come up only *after* the marks sheets are issued and not before. The Board has misapplied its own guidelines with utter unrealistic an approach. It seems that Board has never bothered to visualise that in its system of assessment, "the marks" do not represent mere numerals for the students; they have direct bearing on the morale of the adolescents. For the Board, it may simply be a matter of numbers but for the students it is a matter

of life, career and the entire mind set. It is expected of the Board of Secondary Education to comport itself in the manner befitting its responsibilities.

27. A comprehension of the fact situation of the present case makes it apparent that so far the student is concerned, there was none of his mistake and correction of clerical tabulation error could not have been denied by the Board with reference to Para (5) of the guidelines and the petitioner is justified in submitting this writ petition against the Board and School. The objection regarding non-impleadment of the other candidate is also baseless. The petitioner has no lis against the said candidate and it was for the Board to have carried out the necessary corrections as requested by the School and for that purpose, the facts could have verified; and further, any inquiry could have been made, if at all there was likelihood of deprivation of any vested right of the other candidate. So far the subject matter of this writ petition is concerned, the Board is not justified in suggesting that the petitioner is bound to litigate against the other candidate even though the petitioner has no grievance against him as such. Even if it be assumed for the sake of arguments that in view of the subject matter of this writ petition and its likely impact, presence of the other candidate was desirable, this Court is clearly of opinion that the respondent Board is nevertheless required to, and could definitely be directed to carry out its duties and for that purpose, presence of the other candidate in this writ petition is not necessary.

28. Having regard to all the facts and circumstances of the case and having found the Board unjustified in refusing the prayer made by the School for correction of the marks sheets only on the ground of delay, this Court considers it appropriate to quash the communication dated 13.08.2004 (Annexure 3) and to direct the Board to take up consideration of the request made by the School under letter Annexure-1 expeditiously. It is made clear that Court has not commented on the merits of the action proposed against the erring Principal of the School and the Board shall be free to pursue the matter with the State Government. However, so far this writ petition is concerned, the Board, having driven the petitioner unnecessarily to this litigation, remains liable for the costs.

29. As a result of the aforesaid, this writ petition succeeds to the extent indicated above; the impugned action of the Board of Secondary Education in its letter dated 13.08.2004 (Annexure 3) in refusing to entertain the request made by the respondent No. 2 School is quashed; the respondent No. 1 Board is directive to take up the request made by the respondent No. 2 School immediately for consideration on its merits and to decide the same, with all consequential actions as might be required, within 30 days from today. The petitioner shall be entitled to, and the Board shall be liable for, the costs of this writ petition quantified at Rs. 2,200/-.

Petition allowed.

