THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Extra Ordinary Jurisdiction)

Division Bench: **THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, ACTING CHIEF JUSTICE**
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P.(C) No. 36 of 2019

Ms Neha Sharma
Daughter of Shri Manoj Kumar Sharma,
Resident of Rawtey Rumtek,
Adampool,
East Sikkim.

..... **Petitioner**

Versus

1. Sikkim University
Through the Vice Chancellor,
6th Mile, Tadong,
Gangtok,
Sikkim – 737102.

2. The Registrar,
Sikkim University,
6th Mile, Tadong,
Gangtok,
Sikkim – 737102.

3. The Controller of Examinations,
Sikkim University,
6th Mile, Tadong,
Gangtok,
Sikkim – 737102.

4. Ms Rinchen Choden Khangsherpa,
Daughter of Shri Tashi Wangdi Khangsherpa,
Resident of Chooksing House,
Near Namdul Residency,
Upper Arithang,
Gangtok – 737101.

..... **Respondents**

Petition under Article 226 of the Constitution of India.

Appearance:
Mr. S.S. Hamal, Advocate (Legal Aid Counsel) for the Petitioner.

Mr. Saurabh Tamang, Advocate for the respondents no. 1, 2 & 3.

None for respondent no. 4.

Date of hearing : 11.08.2021
Date of judgment: 02.09.2021

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. Ms Neha Sharma has filed the present writ petition under Article 226 of the Constitution of India seeking enforcement of her fundamental rights as well as challenging the legality and validity of the last sentence of Clause 10 of the Regulations on Conduct of Examinations of the Sikkim University (the Regulations).

2. It is the case of the petitioner that in December 2016, she appeared for the III Semester Master of Arts December 2016 Examination conducted by the Sikkim University (respondent no.1) in the subject "Social Movements in India". She secured 69 out of 100 marks and her Sessional Grade Point Average (SGPA) and Cumulative Grade Point Average (CGPA) after the III semester was as follows:

Semester	I	II	III	C.G.P.A	Result
S.G.P.A	8.00	8.25	7.75	8.00	Pass

3. The petitioner was dissatisfied with the marks she obtained in the subject "Social Movements in India". She, therefore, applied for re-evaluation. Before the result of her re-evaluation, the date for the final semester in the Master of Arts for June 2017 examination was declared. She sat for the examination. After the final semester examination was over, the result of the examination was declared by the Sikkim University and her SGPA and CGPA for the final semester in Master of Arts for June 2017 examination in Sociology was as follows:

Semester	I	II	III	IV	C.G.P.A	Grade
S.G.P.A.	8.00	8.25	8.00	7.50	7.94	A(A only)

4. When she received the grade card, she noticed that although SGPA awarded to her for the III semester was 7.75, in the grade card for the IV semester, the SGPA for the III semester was reflected as 8.00. She enquired from the Sikkim University and learnt that this increase from 7.75 to 8.00 for the III semester was due to re-evaluation and her marks had improved from 69 to 73 out of 100.

5. On 03.10.2019, the Sikkim University issued the corrected grade card of the III semester Master of Arts December 2016 examination to her in which for her paper "Social Movements in

India", she had secured 73 out of 100 and thus her SGPA and CGPA after her III semester were as follows:

Semester	I	II	III	C.G.P.A	Grade
S.G.P.A.	8.00	8.25	8.00	8.08	Pass

6. On 15.10.2019, a letter was written to the Head of the Department of Sociology of Sikkim University by the Controller of Examinations (respondent no.3) stating that the fifth convocation for conferment of degrees & awards of medals for the batch of 2017, 2018 and 2019 was going to be held in the first week of November 2019 and that the gold medal in the Master of Arts in Sociology for the batch of 2017 was to be awarded to respondent no.4 whose CGPA was only 7.56. After the petitioner learnt that the respondent no.4 who had secured less than her was being awarded the gold medal, the petitioner immediately approached the authorities with her grievances. She was then informed about the last sentence of Clause 10 of the Regulations on Conduct of Examinations (the impugned provision). On 25.10.2019, the petitioner wrote to the Registrar, Sikkim University (respondent no.2) and requested him to reconsider their decision for the award of gold medal. Neither the Sikkim University nor the respondents no. 2 or 3 responded. Instead, the gold medal was awarded to the respondent no.4.

7. The petitioner submits that Clause 10 of the Regulations is ultra vires the Constitution and is unreasonable, arbitrary, and violative of the fundamental rights guaranteed under Article 14 of the Constitution of India. The decision of the Sikkim University not to award the gold medal to the petitioner is also unreasonable, arbitrary, and unfair, as it failed to consider that the result of a candidate becomes final only after re-evaluation. It is urged that the artificial barrier created between valuation and re-evaluation by Clause 10 of the Regulations do not stand the test of fairness or reasonableness required by Article 14 of the Constitution. It is also urged that Clause 10 of the Regulations to the extent thereof conflicts with Clause 6 of the Regulations which provides for re-evaluation and re-scrutiny of the result. The rationale underlying the rule of re-evaluation is that no candidate should suffer for the mistake of the examiner and if a candidate is deprived of the result, he/she deserves, which Clause 10 of the Regulations fails to consider. She seeks a writ quashing the impugned provision and for a further direction upon the Sikkim University to award the gold medal to the petitioner.

8. The respondents no. 1, 2 and 3 have filed a joint counter-affidavit. It is stated that the Sikkim University is a Central University established in the year 2007 by the Sikkim University Act, 2006 of Parliament of India (the Act) and is

empowered to make statutes, ordinances for conditions of award of fellowships, scholarships, studentships, medals and prizes. It is stated that section 30(1)(f) of the Act provides for the issuance of ordinances providing for conditions of award of fellowships, scholarships, medals and prizes. It is stated that Clause 31 of the Act empowers the University to make regulations. It is stated that it is in exercise of section 31 of the Act that the Sikkim University had framed the Regulations which was duly approved by the Executive Council on the recommendation of Academic Council vide resolutions dated 31.10.2015. It is urged that Sikkim University had published and notified the Regulations vide Notification no. 13/2016 dated 10.03.2016. It is also pointed out that Sikkim University had made the amendments in the Ordinance titled: "OC-5 - On the Master's Degree Programme in Arts, Science, Law, Medicine, Education, Home Science, Commerce and Professional Courses" (the Ordinance) which was approved by the Executive Council on the recommendation of the Academic Council in its 27th meeting held on 9th June, 2017. It is stated that Clause 11 of the Ordinance provides that scores obtained after re-evaluation or improvement examination shall not be considered for medals. It is stated that the Ordinance was approved by the Executive Council in its 27th meeting held on 09.06.2017. The respondents no.1, 2 and 3 are under an obligation to adhere to and abide by the Regulations and the Ordinance. Respondents no.1, 2 and 3 have admitted to the re-

evaluation of marks stated by the petitioner and the marks obtained thereafter. It is stated that the letter dated 15.10.2019 was issued by the respondent no.3 as per the merit list which was duly approved as per the Regulations. It is contended that the petitioner is not entitled to the gold medal in view of Clause 10 of the Regulations. It is submitted that Clause 10 of the Regulations is neither illegal nor arbitrary.

9. The Sikkim University Act, 2006 was enacted to establish and incorporate a teaching and affiliating University in the State of Sikkim and to provide for matters connected therewith or incidental thereto. It received the assent of the President on the 10th of January 2007.

10. Section 2(q) defines "Regulations" to mean the Regulations made by any authority of the University under this Act for the time being in force.

11. Section 5 enumerates the powers of the University. Section 5(xiii) gives the University the power to institute and award fellowships, scholarships, studentships, medals, and prizes.

12. Section 30 of the Act provides for the power of the University to make ordinances. Subject to the provisions of the Act and the Statutes made under section 29 of the Act, the

ordinances may provide for any of the matters enumerated in section 30(1)(a) to (p). Amongst them, section 30(1)(f) gives power to the University to make ordinances to provide for conditions for award of fellowships, scholarships, studentships, medals and prizes. In terms of the power conferred by section 30(b) of the Act, the University has made the Ordinance. Clause 11 of the Ordinance thereof, is as under: -

> "**11.** Students securing a minimum of 4.0 CGPA shall be considered and would be eligible to be awarded the Degree. Students securing CGPA higher than the minimum stipulated CGPA shall be placed in the relevant grades as computed on a 10 point scale."
>
> Further, the top two scorers in terms of absolute score shall be awarded Gold and Silver medals respectively subject to the condition that such score, if below 60%, shall not be considered for medal. *The scores obtained after re-evaluation or improvement examination shall also not be considered for medal.*
>
> The mark sheet shall indicate the Grade obtained and the absolute score while the certificates awarded shall carry the Grade obtained and the CGPA."

13. The aforesaid Clause 11, as indicated in Annexure R-5 filed by the respondents no.1, 2 and 3, was approved by the Executive Council in its 27th Meeting held on 9th June 2017 only. The Ordinance does not indicate that it has retrospective operation. Admittedly, the petitioner was seeking re-evaluation of her marks obtained in the III semester of the Master of Arts December 2016 examination for which she had appeared in December 2016. Clause 11 of the Ordinance was therefore not in

existence at the time when the petitioner sat for her examination and would not apply to her.

14. Section 31 of the Act gives the power to the University to make regulations consistent with the Act, the Statutes and the conduct of their own business and that of their committees, if any, appointed by them and not provided for by the Act by the Statutes, or the Ordinances, in the manner prescribed by the Statute. Thus, the authorities, i.e., the Court; the Executive Council; the Academic Council; the College Development Council; the Board of Studies; the Finance Committee; and such other authorities as may be declared by the Statutes to be the authorities of the University have been given the power to make regulations which must be consistent with the Act, the Statutes, and the conduct of their own business and that of the committees.

15. The Regulations deal with the Role of Controller of Examinations, Role of the Centre in Charge and the Centre Supervisors, Assessment Procedures: Sessional Tests and End Semester Examinations; Question Paper Setting; Moderation of Question Papers; Evaluation; Re-evaluation and Re-Scrutiny; Improvement Provisions; Publication of Results, Rectification of Results, Award of Degree/Medal; Examination Disciplinary Committee, Unfair Means and Lapses Committee. A perusal of the relevant provisions for Evaluation, Re-evaluation and Re-

Scrutiny, Improvement Provisions, Publication of Result, Rectification of Results and Award of Degree/Medal reflects that detailed procedure has been provided for in the Regulations.

16. The petitioner sought for re-evaluation under Clause 6 of the Regulations. Clause 6 of the Regulations deals with re-evaluation and re-scrutiny. It is as under:

> **"6. Re-evaluation and Re-Scrutiny**
>
> a. A student, if dissatisfied with his/her result, may apply to the office of the CoE requesting re-evaluation of one or more papers as the case may be. Such applications for re-evaluation must have to be duly recommended by the principal of the concerned college in case of a college student/Hod in case the student is from a University department and must reach the office of the CoE complete in all respect within 12 days counting from the day of the declaration of the result.
>
> b. All such applications for re-evaluation shall be accepted at the office of the CoE only if they accompany the prescribed fee as is being levied by the University for undertaking such exercises and are submitted within the stipulated timeframe defined at Clause 6(a).
>
> c. The CoE shall appoint an examiner from amongst the empanelled list of such examiners for undertaking the re-evaluation exercise. An examiner so appointed must not be the examiner who originally evaluated the script.
>
> d. Post re-evaluation, the higher of the two scores shall be treated as the final score. However, in case the re-evaluated score exceeds the first score at least by 10 marks or more, the concerned answer script shall be re-examined by the third examiner and the score awarded by the third examiner shall be treated as the final score.
>
> e. There shall be no re-evaluation for sessional tests and/or practical examinations.
>
> f. A student may request for a fresh scrutiny of her/his papers (not more than two in a particular end semester examination) on payment of prescribed fee as fixed by the university. Such requests for re-scrutiny must have to be duly recommended by the Principal of the concerned college in case of a college student/HoD in case the student is from a University department must

> reach the office of the CoE complete in all respect within 12 days counting from the day of the declaration of the result."

17. Clause 6 of the Regulations therefore permits re-valuation on the recommendation of the head of the department. Even a fee is prescribed to seek re-evaluation. The CoE may accept the application if it is accompanied by the prescribed fee and submitted within the timeline. The examiner who is to be appointed by the CoE from the empanelled list cannot be the same examiner who had originally examined the script. Clause 6 of the Regulations clarifies that post re-evaluation, the higher of the two scores shall be treated as the final score.

18. The publication of result is thereafter as provided in Regulation 8. Regulation 9 provides for rectification of results after the result has been declared which is in the nature of printing/calculation errors detected on his/her grade card in respect of name, semester, title of paper(s), CGPA and SGPA score within seven days from the date of receipt of the Grade Sheet. It is thereafter that degrees and medals are awarded as provided for in Regulation 10. Regulation 10 reads as under: -

> "**10. Award of Degree/Medal**
>
> The students obtaining the highest and the second highest CGPA score at the Final Semester Examination in their respective subjects shall be awarded with Gold and Silver Medals in the subsequent Convocation held at the university post declaration of such results. The Re-evaluated candidates, however, shall not be eligible for the award of Rank/prizes and medals as the case may be."

19. Clause 10 of the Regulations provides that the student obtaining the highest and the second highest of the CGPA score at the final semester examination in their respective subjects shall be awarded with gold and silver medals in the subsequent convocation. Clause 6 and Clause 10 of the Regulations need to be read together. So read, the word "score" used in both these clauses impart the same meaning. This means that the consideration for award of the gold and the silver medals is the CGPA "score" at the final semester examination which would, in a case of re-evaluation, be the "final score".

20. The petitioner has challenged the *vires* of the impugned provision which provides that the re-evaluated candidates, however, shall not be eligible for award of rank/prizes and medals. The impugned provision seems to be disjoint from the scheme of Clause 6 and Clause 10 of the Regulations. The challenge is to the unconstitutionality of the provision and not that it is ultra vires the Act, Statute or the Ordinance. It is also challenged on the ground that the impugned provision conflicts with Clause 6 of the Regulations thereof.

21. Similar provisions like that of the impugned provision had been put to test before various High Courts of the country. In ***Bhagat Ram Sharma vs The Himachal Pradesh University and***

Others[1], the Himachal Pradesh High Court examined the provisions regarding scholarships, etc., contained in Ordinances 16.14 to 16.19 framed by the Himachal Pradesh University. Certain amendments to the Ordinances were made which reads as follows:

> **"14.** .....
>
> 6.70. (a) to (d) X X X X X X X X
>
> (e) Whatever be the change in awards after re-valuation the same shall be conveyed to the candidate.
>
> *A candidate who applies for re-valuation shall not be entitled to claim any retrospective benefit such as admission/promotion to any course/class, eligibility to sit for the Medical College entrance Test, or the grant of scholarship/award/freeship/medal etc. etc., on the basis of declaration of the result of re-valuation. Further that the results of re-valuation declaration shall not be considered as a time-bound process.*
>
> Provided further that in case the re-valuation result is received after the commencement of the subsequent examination which the applicant has taken, out of the two results i.e. one on the basis of re-valuation and the other on the basis of his performance in the subsequent examination, the result that is advantageous to the applicant will be conveyed to him.
>
> (f) & (g) X X X X X X X X"
>
> [emphasis supplied]

22. The appellants contended that the respondents had no right to amend the Ordinances/Rules to the detriment of the appellant and it could not be given any retrospective effect. It was alleged that the actions of the respondents were *mala fide* and violative of the principle of natural justice as also Article 14 of

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[1] AIR 1987 HP 21

the Constitution. The amendments made by the Executive Council of the HP University were challenged as being illegal and without any authority. The High Court held that the appellant who had secured more marks than the respondent no.4 therein after revaluation was entitled to the grant of the scholarship and the gold medal. It was held that the result declared upon the revaluation of certain papers of a candidate will date back to the date upon which the result of all the candidates including the appellant (whose papers had been re-valuated) and others who had taken the examination with him was declared. A direction was thus issued to award the scholarship as well as the gold medal to the appellant in preference to respondent no.4. It was also held that the Executive Council of the University had no authority to amend the Ordinances retrospectively.

23. In ***Manoj Kumar Jindal vs Ravishankar University, Raipur and others***[2], the Division Bench of the Madhya Pradesh High Court examined a case in which the petitioner therein was shown as ranking third in the merit list of B.Com. final degree examination. On revaluation, as permissible, he was held to have scored the highest marks, and therefore claimed to be shown at serial no.1 in the merit list. The Executive Committee, however, did not amend the merit list as requested on the ground that merit list had to be declared immediately and could not be

[2] 1988 M.P.L.J. 608

changed because of revaluation. This decision was challenged under Article 226 and 227 of the Constitution as being arbitrary, discriminatory and a denial of the petitioner's legal right to a legitimate place in the merit list. It was held on examination of Clause 31 of Ordinance 6 of the M.P Vishwavidyalaya Adhiniyam that although it does not expressly state at what stage a merit list must be published but a harmonious construction of provisions for examinations, which include provisions for revaluation, shows that a merit list is of a tentative nature likely to be modified or amended consequent upon revaluation. Since the object behind revaluation is that every student should get his due, a person deserving the first position cannot be deprived of his legal right to the position and consequential benefits. A direction was thus issued for notification of a fresh merit list assigning the first position to the petitioner.

24. In ***Anjay Bansal vs Bangalore University and Another***[3], the Karnataka High Court examined notification dated 9.8.1985 issued by the Bangalore University which prohibited revised ranking in respect of those examinees who derived benefit in the revaluation save the declaration of class. The provision of the said notification which was sought to be quashed was as under:

> "**2.** .....
>
> **7.** No revised rank will be declared in respect of those who get benefit in the

[3] AIR 1990 Karnataka 225

> revaluation (review) and no incidental benefit which accrue due to the revaluation (review) will be granted, except declaration of class."

25. The petitioner therein had sought for revaluation as permitted. On revaluation, his marks rose and therefore he was entitled to be placed in the tenth rank in place of respondent no.2. His representation to award him the rank was not met with any response in view of para 7 of the impugned notification. The Karnataka High Court quashed para 7 of the impugned notification and directed the respondent no.1 to award the tenth rank to the petitioner in the place of the respondent no.2 in the B.Com. degree examination held in April 1988.

26. In ***Rajendrakumar Chandrakant Nadkarni vs. University of Bombay***[4], the Bombay High Court examined the impugned provision of the ordinance which provided:

> "The revised marks obtained by a candidate after revaluation as accepted by the University shall be taken into account for the purpose of amendment of its results in accordance with the rules of the University in that behalf, *but these marks shall not be taken into account for the purpose of award of scholarships, prizes, medals and/or the order of merit."*
>
> *[Emphasis supplied]*

27. The Bombay High Court held while relying upon the judgment in ***Anjay Bansal*** (supra) that:

> "If revaluation is permitted and if ranking in so far as class is concerned is awarded to the candidates who get the benefit of revaluation, there is no reason to restrict the result to the mere

[4] 1990 Mh.L.J. 1143

> declaration of a class. The full benefit to the vindicated candidate has to be awarded and his marks have to be taken into account for the purpose of scholarships, prizes, medals and/or the order of merit. Accordingly, the impugned communication bringing to the petitioners notice the alleged error in proclaiming him the first amongst the successful candidates was quashed and the special certificate awarded on 17.8.83 was confirmed."

28. The Rajasthan High Court in ***Ram Karan vs. The University of Raj Jaipur*** (Civil Writ Petition no. 1268/87, decided on 9.9.96), examined a provision of the Ordinance debarring a person to be put on higher position after re-evaluation of marks. It was held that the Ordinance 157A(11) is absolutely unreasonable and liable to be struck down. The candidate would not be at fault if there is mistake committed by the examiner in giving or totaling the marks. If this clause (11) of the Ordinance 157A is allowed to stand then it will frustrate the very purpose of revaluation. Clause 11 is wholly unreasonable and, therefore, liable to be struck down and accordingly, it was declared to be invalid and struck down. The respondent was directed to include the name of the petitioner in the merit list by including the marks obtained by him in the revaluation. Since the petition was of the year 1987 it was held that it would not be proper at this stage to direct the respondent to withdraw the gold medal from the first candidate and award it to the petitioner. However, it was also held that the respondent can certainly be directed to award gold medal to the petitioner in addition to the gold medal awarded to the first candidate. Accordingly, the respondent was

directed to present gold medal to the petitioner for securing the highest marks in M.Sc. Final Examination in Botany held in March 1986.

29. In ***Fateh Kumari Sisodia vs State of Rajasthan and Others***[5], the Rajasthan High Court also examined a similar provision in the rule formulated by the Mohanlal Sukhadia University debarring candidates to be eligible for award of gold medal. The impugned rule formulated by the University so far as it debarred the candidate to be eligible for award of gold medal consequent upon the revision in the result due to revaluation, was held to be ultra vires. A direction was issued to the respondents to put the petitioner in due merit in accordance with the revised mark sheet and include the name of the petitioner in the merit list and award the gold medal to her.

30. In ***Deepa vs. Maharishi Dayanand University, Rothak and Others***[6], the Division Bench of the High Court of Punjab and Haryana examined clause 4.2 of the Ordinance concerning Revaluation of Answer Books framed by the University to the extent that it provided that the marks obtained as a result of re-evaluation of the papers of the course concerned shall not come towards determining the position in the order of merits,

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[5]AIR 1997 Rajasthan 191
[6] (2003) 2RCR (Civil) 342 (DB): 2002 SCC online P & H 1178

distinction and award of gold medal. The said clause read as follows:

> "**4.2** The marks obtained as a result of re-evaluation of the paper(s) of the last examination of the course concerned shall not count towards determining the position in the order of merit, distinction and award of Gold Medal."

31. Clause 4.2 was challenged as being arbitrary, irrelevant and defeating the very object of providing for revaluation. It was contested that the rule therefore did not stand the test of reasonableness as required by Article 14 of the Constitution of India. The High Court held:

> "**9.** A candidate would normally seek revaluation of the result with the earnest hope of improving the result. The desire for revaluation is usually based on an apprehension that perhaps some mistakes has been committed by the examiner in evaluating the answer book. In the rules/regulations for re-evaluation, the candidate is given a chance to have the error detected and corrected. There is a legitimate expectation of an increase in marks. We are of the considered opinion that providing such an opportunity to the candidates would be a source of solace to students who are devoted to studies and are meritorious. The rationale underlying the rule of revaluation seems to be that no candidate should suffer for the mistake of the examiner. In other words, every candidate should get the fruits of his/her labour in pursuing the studies with enthusiasm and vigour. The rule is framed to make sure that no candidate is deprived of the result he/she deserves. The principle of certainty as advocated by Mr. Balram Gupta would put a premium on the mistake committed by the examiner in the first instance. If after revaluation, a candidate secures higher position on merits, there would be no reasonable basis for the denial of consequential awards such as Gold Medals. Clause 4.2, in our opinion, nullifies the benefit of revaluation by declaring that the result of re-evaluation of the papers shall not count towards determining the position in the order of merit, distinction and award of Gold Medal. In such circumstances, revaluation would be sought only by the candidates who have either failed or secured a compartment. The real meritorious candidates like

> the petitioner in the present case, would be wholly deprived of the benefit of revaluation, when the marks of a candidate are increased on re-evaluation. The unes-capable conclusion is that we see no rationale in depriving the candidate of the benefit of the re-evaluation marks for the purpose of improving the merit or for award of Medals. In our considered opinion, the aforesaid rule is wholly arbitrary and has no nexus with the object sought to be achieved. ……."

32. Relying upon ***Fateh Kumari Sisodia*** (supra), ***Rajendrakumar Chandrakant Nadkarni*** (supra), ***Ajay Bansal*** (supra) and ***Manoj Kumar Jindal*** (supra), the High Court held that Rule 4.2 is arbitrary, unreasonable, oppressive and therefore, does not satisfy the equality clause contained in Article 14 of the Constitution of India and further clause 4.2 completely negates the very object it seeks to achieve. Thus, clause 4.2 was declared ultra vires Article 14 of the Constitution of India and was struck down. The impugned order was quashed, and a mandamus was issued directing the respondents to grant the gold medal to the petitioner along with one Navin Kumar and declare that she had topped the University in the 1997 M.Sc. (Physics) Examination alongwith Navin Kumar.

33. The Division Bench of the Punjab and Haryana High Court in ***Nidhi Sharma vs. Guru Nanak Dev University, Amritsar and Another***[7], examined a case similar to the present one where the University declined to award the gold medal to the petitioner in the M.Sc. Hons. botany examination consequent upon the higher

[7] (2005) 1 SLR 264 (3): 2004 SCC online P&H 1341

marks that she had obtained after re-evaluation. The impugned proviso to the regulation 8(i) of Chapter XI of the Guru Nanak Dev University Calendar Volume – III, 1999 read as under:

> "8. The panel of examiners for re-evaluation will be supplied to the chairperson for the Board of Studies in that subject and approved by the Vice-Chancellor.
>
> (i) Each script will be re-evaluated as a whole by two Examiners separately. The average of the two nearest scores out of the three awards including the original shall be taken as final:
> Provided that if the change in marks after re-evaluation is more than 10% of the maximum marks of that paper, leads to a change of result than the script shall be re-evaluated by the fourth Examiner and the average of the three nearest scores out of the four shall be taken as final:
>
> *Provided further that no medal shall be awarded to any candidate on the basis of re-evaluation result. However, this condition shall not apply in the case of change of scores due to re-checking of answer books."*
> *[Emphasis supplied]*

34. The High Court held that the provision contained under Regulation 8(1) was not at all sustainable as the same did not go along with the normal stream of Regulations promulgated by the University. The second proviso to Regulation 8(i) was therefore struck down and a direction was issued to declare the petitioner as first in M.Sc. botany and to award the gold medal to her.

35. In ***Maharashtra State Board of Secondary and Higher Secondary Education and Another vs Paritosh Bhupeshkumar Sheth***

And Others*[8]*, relied upon by Mr. Saurabh Tamang, the Supreme Court was dealing with a challenge to a delegated legislation, i.e., Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 as being in excess of the power of subordinate legislation conferred on the delegate. The Supreme Court held that it had to be determined with reference only to the specific provisions contained in the relevant statute conferring the powers to make the rule, regulations, etc., and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. 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, it is not within the legitimate domain of the court to determine whether the purpose of the statute can be served better by adopting any policy different from what has been laid down by the legislature or its delegate. 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 for its efficacious implementation. Any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and there is no scope for interference by the court unless the particular provision impugned before it can be said to suffer

[8](1984) 4 SCC 27

from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation making power or it being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitation imposed by the Constitution. Paragraph 14 of judgment reads as under;

> **"14.** We shall first take up for consideration the contention that clause (3) of Regulation 104 is ultra vires the regulation-making powers of the Board. The point urged by the petitioners before the High Court was that the prohibition against the inspection or disclosure of the answer papers and other documents and the declaration made in the impugned clause that they are "treated by the Divisional Board as confidential documents" do not serve any of the purposes of the Act and hence these provisions are ultra vires. The High Court was of the view that the said contention of the petitioners had to be examined against the backdrop of the fact disclosed by some of the records produced before it that in the past there had been a few instances where some students possessing inferior merits had succeeded in passing off the answer papers of other brilliant students as their own by tampering with seat numbers or otherwise and the verification process contemplated under Regulation 104 had failed to detect the mischief. In our opinion, this approach made by the High Court was not correct or proper because the question whether a particular piece of delegated legislation — whether a rule or regulation or other type of statutory instrument — is in excess of the power of subordinate legislation conferred on the delegate has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. 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 the 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. Though this legal position is well-established by a long series of decisions of this Court, we have considered it necessary to reiterate it in view of the manifestly erroneous approach made by the High Court to the consideration of the question as to whether the impugned clause (3) of Regulation 104 is ultra vires. In the light of the aforesaid principles, we shall now proceed to consider the challenge levelled against the validity of the Regulation 104(3)."

36. The Supreme Court in ***Maharashtra State Board of Secondary and Higher Secondary Education and Another*** (supra) clearly laid down the approach of the constitutional courts when the challenge is that the delegated legislation is in excess of the power of subordinate legislation conferred on the delegate. The Supreme Court also held that a provision of the delegated legislation could also be rendered ultra vires if it is in violation of any of the limitation imposed by the Constitution.

37. In ***Basheshar Nath vs Commissioner of Income Tax Delhi and Rajasthan & Another***[9], the Supreme Court in paragraphs 13 and 14 held as under:

> **"13.** Article 14 runs as follows:—
> "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."
> It is the first of the five articles grouped together under the heading "Right to Equality". The underlying object of this article is undoubtedly to secure to all persons, citizens or non-citizens, the equality of status and of opportunity referred to in the glorious Preamble of our Constitution. It combines the English doctrine of the rule of law and the equal protection clause of the 14th Amendment to the American Federal Constitution

[9]AIR 1959 SC 149

which enjoins that no State shall "deny to any person within its jurisdiction the equal protection of the laws". There can, therefore, be no doubt or dispute that this article is founded on a sound public policy recognised and valued in all civilised States. Coming then to the language of the article it must be noted, first and foremost that this article is, in form, an admonition addressed to the State and does not directly purport to confer any right on any person as some of the other articles e.g. Article 19, do. The obligation thus imposed on the State, no doubt, enures for the benefit of all persons, for, as a necessary result of the operation of this article, they all enjoy equality before the law. That is, however, the indirect, though necessary and inevitable, result of the mandate. The command of the article is directed to the State and the reality of the obligation thus imposed on the State is the measure of the fundamental right which every person within the territory of India is to enjoy. The next thing to notice is that the benefit of this article is not limited to citizens, but is available to any person within the territory of India. In the third place it is to be observed that, by virtue of Article 12, "the State" which is, by Article 14, forbidden to discriminate between persons includes the Government and Parliament of India and the Government and the legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. Article 14, therefore, is an injunction to both the legislative as well as the executive organs of the State and the other subordinate authorities. As regards the legislative organ of the State, the fundamental right is further consolidated and protected by the provisions of Article 13. Clause (1) of that article provides that all laws in force in the territories of India immediately before the commencement of the Constitution, insofar as they are inconsistent with the provisions of Part III shall, to the extent of the inconsistency be void. Likewise clause (2) of this article prohibits the State from making any law which takes away or abridges the rights conferred by the same Part and follows it up by saying that any law made in contravention of this clause shall, to the extent of the contravention, be void. It will be observed that, so far as this article is concerned, there is no relaxation of the restriction imposed by it such as there are in some of the other articles e.g. Article 19 clauses (2) to (6). Our right to equality before the law is thus completely and without any exception secured from all legislative discrimination. It is not necessary, for the purpose of this appeal to consider whether an executive order is a "law" within the meaning of Article 13, for even without the aid of Article 13 our right to the equal protection of the law is protected against the vagaries, if any, of the executive Government also. In this connection the observations of Lord Atkin in *Eshugbayi Eleko* v. *Officer Administering the Government of Nigeria* [L.R. (1931) AC 662| are apposite. Said His Lordship at p. 670 that in accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British subject except when he can support the legality of his act before a court of justice. That apart, the very language of Article 14 of the Constitution expressly directs that "the State", which by Article 12 includes the executive organ, shall not deny to any

> person equality before the law or the equal protection of the law. Thus Article 14 protects us from both legislative and executive tyranny by way of discrimination.
>
> **14.** Such being the true intent and effect of Article 14 the question arises, can a breach of the obligation imposed on the State be waived by any person? In the face of such an unequivocal admonition administered by the Constitution, which is the supreme law of the land, is it open to the State to disobey the constitutional mandate merely because a person tells the State that it may do so? If the Constitution asks the State as to why the State did not carry out its behest, will it be any answer for the State to make that "true, you directed me not to deny any person equality before the law, but this person said that I could do so, for he had no objection to my doing it". I do not think the State will be in any better position than the position in which Adam found himself when God asked him as to why he had eaten the forbidden fruit and the State's above answer will be as futile as was that of Adam who pleaded that the woman had tempted him and so he ate the forbidden fruit. It seems to us absolutely clear, on the language of Article 14 that it is a command issued by the Constitution to the State as a matter of public policy with a view to implement its object of ensuring the equality of status and opportunity which every welfare State, such as India, is by her Constitution expected to do and no person can, by any act or conduct, relieve the State of the solemn obligation imposed on it by the Constitution. Whatever breach of other fundamental right a person or a citizen may or may not waive, he cannot certainly give up or waive a breach of the fundamental right that is indirectly conferred on him by this constitutional mandate directed to the State."

38. The question whether arbitrariness and unreasonableness or manifest arbitrariness and unreasonableness being facets of Article 14 are available or not as grounds to invalidate legislation is no longer *res integra*. A five Judges Constitutional Bench of the Supreme Court in ***Subramanian Swamy vs. Director, Central Bureau of Investigation and Another***[10]**,** held as under:

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[10] (2014) 8 SCC 682

> **"49.** Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs to be recognised by the Court and due regard and deference must be accorded to the legislative process. Where the legislation is sought to be challenged as being unconstitutional and violative of Article 14 of the Constitution, the Court must remind itself to the principles relating to the applicability of Article 14 in relation to invalidation of legislation. The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now well recognised and these are : (*i*) discrimination, based on an impermissible or invalid classification, and (*ii*) excessive delegation of powers; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders—if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute their views on what the policy is."

39. The respondents no.1, 2 and 3 defend their action stating that they had the power to make the Regulations under Section 31 of the Act. The petitioner, however, doesn't challenge their power to make the Regulations. The petitioner submits that the impugned provision is unconstitutional. Examining the impugned provision, it is manifest that it is discriminatory. The impugned provision creates an impermissible classification between those students who sought re-evaluation and students who did not. A student who has been permitted to seek re-evaluation in terms of Clause 6 of the Regulations and her marks

considered as the final score post re-evaluation is discriminated v*is*-à-*vis* other students who did not seek re-evaluation. The student can seek re-evaluation only because the Regulations permitted her/him to do so. Having thus allowed a student to seek re-evaluation of her/his script by a provision of the Regulations itself, not to have the re-evaluated marks considered for award of a medal, either gold or silver, would amount to punishing the student for seeking re-evaluation even when it is permitted by Clause 6 of the Regulations. It, therefore, directly impinges upon the sacrosanct provision of equality secured by Article 14 of the Constitution of India. Furthermore, the impugned provision does not seem to be in consonance with the scheme of evaluation, re-evaluation and re-scrutiny, improvement of provisions, publication of results, rectification of results and award of degree/medal as contemplated by the Regulations. Reading Clause 6 and Clause 10 of the Regulations *sans* the impugned provision thereof, together, it is clear that the re-evaluated marks are the final score for purposes of award of medals. In that view of the matter, the impugned provision is ultra vires the rest of the provision of Clause 10 of the Regulations as well. The impugned provision makes the object of Clause 6 and Clause 10 of the Regulations they seek to achieve, ineffective.

40. The writ petition is thus allowed.

41. The impugned provision which reads, "..... *The Re-evaluated candidates, however, shall not be eligible for the award of Rank/prizes and medals as the case may be*." is declared ultra vires Article 14 of the Constitution of India and is struck down.

42. It is directed that the Sikkim University shall award the gold medal to the petitioner and declare her having secured the highest marks in Master of Arts in Sociology for the batch of 2017.

(Bhaskar Raj Pradhan)
Judge

(Meenakshi Madan Rai)
Acting Chief Justice

Approved for reporting : **Yes/~~No~~**
Internet : **Yes/~~No~~**

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