

Civil Appellate

Present :

The Hon'ble Mr. Justice Ashim Kumar Banerjee

And

The Hon'ble Mr. Justice Kalidas Mukherjee**F.M.A. 1424 of 2008****Sri Sanchit Bansal and Another****-Versus-****The Joint Admission Board (JAB) and Others**

Judgment on : January 6, 2010.

Point:

Cut-Off Marks: Fixation of cut-off mark -Whether within the scope of judicial review - The Constitution of India, Art. 226.

Fact: Petitioner failed to secure the bench-mark fixed in chemistry however scored much higher marks in aggregate, compared to the last candidate admitted in I.I.T. Questioning the procedure for fixing the bench-mark, petitioner filed the writ application which was disposed of.

Held:

Fixation of cut-off mark is a highly technical process and is not within the scope of judicial review unless the same is blatant malafide apparent on the face of the record.

Paragraph – 11.2.1

Selection process must be transparent, simple and made known to the students before they participate.

Paragraph – 13.2

Cases considered:

- A. AIR1986SC1571 (Central Inland Water Transport Corporation Ltd. Vs. Brojonath Ganguly)
- B. 1990ILR(Cal)VolIV383 (University of Calcutta Vs. Gautam Kumar Roy)
- C. AIR1997SC2110 Rajkumar & Ors. Vs. Shakti Raj & Ors.)
- D. AIR2007SC950 (Sanjay Singh Vs. U.P. P.S.C., Allahabad & anr.)

- E. AIR1999SC2861 (The Banking Service Recruitment Board, Madras Vs. Ramalingam & Ors.)
- F. 2008(2)CHN773 (University of Berdwan & anr. Vs. Prasanto Chatterjee)

For the Appellant : Mr. Tapabrata Chakraborty
Mr. Arindam Mondal
Mr. Shamit Sanyal
Mr. Debasis Nandy

For the respondent : Mr. Malay Kumar Basu
Mr. R.N. Majumdar
Mr. Bimal Jyotsna Chatterjee
Mr. Arun Kumar Basu

The Court:

1. FACTS :-

Rajib Kumar, the appellant no.2 is a professor, teaching in I.I.T. (Indian Institute of Technology), Kharagpur. His son Sanchit Bansal appeared in the Engineering Entrance Test in 2005. He was, however, unsuccessful. He again sat for the Joint Entrance Examination for the year 2006. He was again unsuccessful. He also sat for West Bengal Joint Entrance Examination where he was successful and he got himself admitted in Jadavpur University where he is now studying. Sanchit was, however not happy with the result of J.E.E. performance. His father Rajib was also dissatisfied. He started making correspondence with the J.E.E. authority. He asked for necessary details under the Right to Information Act, 2005 (hereinafter referred to as R.T.I. Act). The authority initially declined however subsequently the required informations were supplied. We do not wish

to go in detail with regard to the proceedings before the authorities under the R.T.I. Act being strictly not relevant herein. Fact remains, Sanchit became disqualified as he could not touch the bench mark fixed in Chemistry. He got 52 whereas the bench mark in Chemistry was 55 fixed by the Joint Entrance Board. Sanchit, however, scored much higher marks in aggregate, compared to the last candidate admitted in I.I.T. Rajib questioned the procedure for fixing the bench mark. He also alleged mala fide.

2. WRIT PETITION :-

2.1. On June 12, 2007 Rajib for himself as also on behalf of Sanchit who was minor at that time, approached the learned single Judge by filing a writ petition being W.P. 11434 (W) of 2007, inter alia praying for quashing of the merit list prepared by the J.E.E. Board in April, 2006 and for preparation of a fresh merit list after properly evaluating Chemistry paper of Sanchit. He also prayed for credit based transfer in appropriate semester in I.I.T.

2.2. Although several grounds were taken in the writ petition the main thrust was on the fixation of cut-off marks in Chemistry and mala fide.

3. STAND OF THE INSTITUTE :-

The writ petition was contested by the institute as well as the Joint Admission Board. They denied each and every allegations brought against them. They also disclosed the procedure followed for fixation of the cut-off mark. They also

disclosed that there were at least twelve students who could not get themselves admitted although they got higher marks in aggregate than that of the last admitted candidate.

4. THE JUDGMENT AND ORDER OF THE LEARNED SINGLE JUDGE :-

Learned single Judge initially passed an order directing the institute to form a panel of experts comprising of statistical experts from Indian Institute of Management, Joka, Jadavpur University and Calcutta University to obtain their views on the procedure for fixation of cut-off mark. The learned Judge by the same judgment and order dated August 27, 2007 later stayed the earlier direction for formation of the panel and asked the Chairman of the Joint Entrance Board to satisfy the Court about the fixation of the cut-off mark. The matter was, thereafter, heard from time to time and the hearing was concluded by His Lordship on September 26, 2007. His Lordship, by judgment and order dated June 13, 2008, finally disposed of the matter by observing as follows :-

“In the facts of the instant case, the writ petitioners have not been able to demonstrate, by producing even a scrap of paper that they had lodged their protest with regard to the declaration given by them before Joint Admission Board. Apart from that, the respondents have justified in their affidavit-in-opposition as to how they arrived at the cut-off marks for Chemistry subject for J.E.E., 2006. The writ court cannot venture to supplant the reasons given by the respondents by which they arrived at the figure 55, since the same is purely within the domain of the Joint Admission Board and cannot be by any stretch of imagination be said to be flawed or arbitrary.”

5. THIS APPEAL :-

5.1. Being aggrieved by the said judgment and order, Sanchit and Rajib jointly filed the instant appeal which was heard by us on the above mentioned dates. We were told, initially the matter was before another Division Bench when the appellants wanted to bring on record, few facts to satisfy the Court on the issue of mala fide. However from the records it is not clear whether those documents and/or supplementary affidavits were taken on record or not.

5.2. On perusal of the record we however find that the matter went to another Division Bench where an expert was appointed to submit a report on the issue of fixation of cut-off mark. The expert duly submitted his report and we permitted the parties to argue on the report.

6. CONTENTION OF THE APPELLANT BEFORE US :-

6.1. Mr. Tapabrata Chakrabarty, learned Additional Government Pleader argued on behalf of the appellants before us. Mr. Chakrabarty mainly argued on the procedure of fixation of cut-off mark and the issue of mala fide.

6.2. Elaborating his argument Mr. Chakrabarty demonstrated the procedure followed for the purpose of fixation of the cut-off mark and made elaborate

submissions on that count. He contended that the simple method of the calculation of the bench mark was avoided by the Board without any reason. He demonstrated the fixation of cut-off mark in 2007 and 2008 examinations where the simple method was adopted. Had those methods been adopted Sanchit could have been admitted in I.I.T.

6.3. On the issue of mala fide Mr. Chakrabarty contended that the principal cause for elimination of Sanchit was due to submission of a confidential report by Rajib on the performance of one Mr. Tewary who was the Chairman of the Joint Admission Board. He contended that the entire allegation was against Tewary. Hence the learned Judge should not have relied on the expert report submitted by Tewary. He also contended that under the Rules of the Institute the examination papers were to be preserved for at least one year whereas in the instant case the examination papers were destroyed in undue haste. This was done only to avoid fresh evaluation of the answer scripts.

6.4. Mr. Chakrabarty relied on paragraph 48 of the writ petition wherein details of mala fide were given. The said paragraph was, however not dealt with properly by Mr. Tewary as would appear from paragraph 42 of the affidavit-in-opposition appearing at page 286-287 of the paper book.

6.5. Mr. Chakrabarty also made elaborate submissions on “erasing”. According to him, the students were to use HB pencil to answer the questions and a carbon

copy of the same was generally given back to the students so that the possibility of subsequent erasing was blocked. Such procedure was not followed when Sanchit participated in 2006 J.E.E.

7. CASES CITED :-

To support his contentions Mr. Chakraborty cited the following decisions :-

i) Central Inland Water Transport Corporation Ltd. and Another –VS- Brojo Nath Ganguly and Another AND Central Inland Water Transport Corporation Ltd. and another –VS- Tarun Kanti Sengupta and Another reported in All India Reporter, 1986, Supreme Court, Page-1571.

ii) University of Calcutta –VS- Gautam Kumar Roy reported in 1990, Volume-IV, Indian Law Reporters (Calcutta), Page-383.

iii) Rajkumar and Others –VS- Shakti Raj and Others reported in All India Reporter, 1997, Supreme Court, Page-2110.

iv) Sanjay Singh and Another –VS- Uttar Pradesh Public Service Commission, Allahabad and Another reported in All India Reporter, 2007, Supreme Court, Page 950.

8. CONTENTION OF THE INSTITUTE :-

Mr. Rabindra Nath Mazumdar, learned counsel appearing for the institute while opposing the appeal contended that cut-off mark was fixed by the Board each year after the examination was held. Such cut-off mark varies each and every year depending upon the performance of the students. Mr. Mazumdar further contended that a procedure was followed which could not be said to be wrong as would appear from the independent expert report. In any event, whether such

procedure was correct or not, was not within the domain of the judicial review. Mr. Mazumder also demonstrated model answer scripts to show that it was not possible to identify a particular candidate at the time of evaluation of his answer script. Hence, the allegation of mala fide was unfounded.

9. CASES CITED :-

Mr. Majumdar cited the following decisions :-

i) The Banking Service Recruitment Board, Madras -VS- V. Ramalingam and Others reported in All India Reporter, 1999, Supreme Court, Page-2861.

ii) University of Burdwan and Another -VS- Prasanto Chatterjee reported in 2008, Volume-II, Calcutta High Court Notes, Page-773.

10. CONTENTION OF THE APPELLANT IN REPLY :-

Mr. Chakraborty reiterated what he had submitted while opening the case on behalf of the appellant. In addition, he contended that the specific allegation of mala fide was not dealt with by Mr. Mazumder. No plausible answer was given while the answer scripts were destroyed in haste. He also contended that no plausible explanation was given as to why the formula appearing at page 304 was not followed in the matter of fixation of the bench mark. He further contended that in case this Court was satisfied with his case he would be entitled to have a credit transfer which was done in case of one Nilanjan Bhattacharyay who was given credit transfer from Jadavpur University to I.I.T. in 1974.

11. OUR VIEW :-

11.1 Cut-off Mark :-

11.1.1. We have carefully perused the rival stand of the parties on the issue. We have also carefully examined the reports. We are not fully sure why the Board adopted a difficult method instead of a simple method that was adopted in subsequent years. In the subsequent years the total marks obtained by the students divided by their numbers helped the Board to get the mean marks. That was done after eliminating the negative markings. After the mean mark was found out standard deviation was subtracted and the result was rounded to the nearest integer to fix the cut-off mark. This procedure was also known earlier as would appear from page 304. This procedure was followed in the subsequent years i.e. in 2007 and 2008. Why in 2006 a difficult procedure was adopted, we do not know. The learned Judge observed that the students having participated in the selection process could not have any grievance. With deepest regard we have for His Lordship, we wish to join issue. When the candidates sat for the examination the cut-off mark was not fixed. Hence, it could not be made known to the students before hand. The “declaration” referred to by His Lordship cannot preempt a candidate to question the preparation of the merit list by fixing a particular method after the examination was over, if the student is otherwise entitled to.

11.1.2. We however wish to look at this problem from a different angle. On perusal of the reports referred to above, we find that fixation of cut-off mark is a scientific process and done by experts. We do not have any expertise to sit on appeal over their decision. We can only say that they could have adopted a

simpler method. That does not mean that the process adopted by them was wrong. At least we cannot say so. In this regard we may refer to an earlier judgment of this Court in the case of Prabhat Kumar Chattopadhyay (Supra). Paragraphs 38 and 39 of the said decision being relevant herein is quoted below:-

*“This leaves us with the sole question as to what extent the order impugned in the writ petition was available for judicial review. Law was settled on the sufficiency of materials to support the reason. Mr. Das went to the extreme by saying that reason should have been disclosed and indicated. With all humility, may we say, such was not the direction of the Division Bench. Mr. Mukherjee, however, did not go that far. According to him the reason should have been apparent on the face of the record. When there was no violation of Article 14 as held by the Division Bench and reiterated by the learned Single Judge the principles of natural justice would not be applicable. It is not the case where a right to be considered for employment along with all eligible candidates was called in question. The respondent spent full time of his service career. He had no right to remain in employment after superannuation. It was the sole discretion of the University to re-employ him for two years provided the University found him **“indispensable”** applying the earlier notification. Pre-requisite to earlier notification was that the incumbent must be found to be **“indispensable”**. However, such pre-requisite was relaxed by 10 (T.U.). Professor Chatterjee was considered at a stage when the earlier notification stood superseded by 10(T.U.). How such consideration was to be made was spelt in 10 (T.U.). The University erred in following the earlier notification which was rightly negated by the earlier Division Bench. Once he was reconsidered in terms of 10T.U. such decision of the University was final as in our humble opinion such decision was not available for judicial review. We humbly admit that we do not have the expertise to judge the performance of the respondent. We can only say that he had a good academic track record. Such work was accredited by various organisations of repute as appears from the record. Whether those are sufficient to*

come to a conclusion that he was fit for re-employment is not to be judged by us. Rather we express our inability in absence of expertise. This is highly expertised job involving academic expertise on the concerned subject.

Let us examine the issue from another angle. Assuming it was open for judicial review to what extent we could examine. Learned Judge made one line observation that since his research works were accredited by organisations of repute he was entitled to re-employment. Accreditation of a research work is a subjective analysis. One organisation might find a research work valuable and recognise the same. Such organisation may be having high reputation in the field. However, such consideration might have a positive value in this regard but cannot have a dominating effect on the decision of the University to come to a conclusion that he was fit for re-employment. The Apex Court consistently held that in academic matters court must be slow to interfere. Our conclusion as above gets support from such consistent view of the Apex Court. We do not know who is correct and who is wrong. We cannot judge the same in view of our inability. Had the case of mala fide and bias being proved, undoubtedly such decision would be open for judicial review although we are not sure to what extent we could do that in absence of expertise. We are to that extent fortunate, we are not compelled to do so in view of the finding of the learned Single Judge that there was no act of mala fide or bias.”

11.1.3. In this regard we may refer to the decision of the Apex Court in the case of The Banking Service Recruitment Board, Madras (Supra) where the Apex Court set aside the High Court decision which interfered with the fixation of cut-off mark.

11.1.4. We thus observe that we are not inclined to sit over the wisdom of the body of experts and we hold that this was not within our domain.

11.2. MALA FIDE :-

11.2.1. We have just now held that fixation of cut-off mark is a highly technical process and is not within the scope of judicial review. We are, however, not unmindful of the fact that some time we do venture to transgress into expert's arena when we find blatant mala fide apparent on the face of the record.

11.2.2. In the instant case the allegation made by Rajib was quite serious in nature. The I.I.T. should have dealt with properly. However, the demonstration of the Bar Code by Mr. Mazumder impressed us a lot. We are of the view that it is too difficult, if not impossible, to locate a student and identify him at the time of evaluation of his answer scripts. It is only possible if all members of the Board and the persons involved in the examination process clubbed together, hatched a conspiracy, to eliminate a particular student. Even if it was done it would be physically a herculean task if not impossible to match the Bar Code to find out a particular student and identify his answer script.

11.2.3. The confidential report submitted by Rajib might have caused annoyance to Tewary. We are however not in a position to link the same with the performance of Sanchit in J.E.E., 2006 to come to a definite conclusion that he was a victim of such annoyance.

11.3. OTHER CASES DISCUSSED :-

11.3.1. The decision in the case of Gautam Kumar Roy (Supra) dealt with a particular answer to a question.

11.3.2. In the case of Rajkumar and Others (Supra), the Apex Court intervened in a selection process where a particular power was exercised after the results were announced. The same has no relevance in the instant case.

11.3.3. Paragraph 90 of the Apex Court decision in the case of Central Inland Water Transport Corporation Ltd. and Another (Supra) was relied upon by Mr. Chakrabarty. In the said Paragraph the Apex Court illustrated the scope of Article 14 and the role of the Court while redressing the grievance of the litigant.

11.3.4. The decision in the case of Sanjay Singh and Another (Supra) was also cited by Mr.Chakrabarty. This decision also dealt with fixation of the mean marks in the matter of selection of the judicial officers.

11.3.5. None of the above decisions would support the contention of Mr. Chakrabarty to the extent that judicial review is available on the issue of fixation of cut-off mark in the given facts and circumstances.

12. CONCLUSION :-

We are thus constrained to hold that we are unable to grant any relief to Sanchit in this regard. Every meritorious student has a dream to be associated with premier institutions of the country. I.I.T. is one of such institutes. We fully

appreciate the agony of Sanchit and Rajib. We are however unable to help them. We wish Sanchit a grand success in his life. He is already associated with another premier institution of the country. We are sure, he would come out successfully and would place himself appropriately in the society.

13. BEFORE PARTING :-

13.1. Before disposing of the matter we would be failing in our duty if we do not make some observation about the conduct of the Board and the Institute in the matter.

13.2. Indian Institute of Technology is not only an institution of repute in the country but also is well-recognized through out the world. It is expected that its management would act impartially, particularly in the matter of admission of students as lakhs and lakhs are dreaming to be associated with this institute. They are sitting in entrance examination every year. The process must be transparent, simple and made known to the students before they participate. The procedures adopted in 2007/2008 as elaborated both by Mr. Chakrabarty and Mr. Mazumdar are more transparent and simple than that of 2006 selection process.

13.3. Rule 12 of the I.I.T. Rules obligates the institute to preserve answer scripts at least for a year. Such Rule may not be strictly applicable in case of the Joint Admission Board. A student tries his best to be admitted in a premier institution

like I.I.T. Despite his best efforts he may not get a chance as someone might have done better than him. The unsuccessful candidate, in our view, must have a clear picture in his front which would eliminate all possibilities of unfair means in the process of selection. The institute has done so in the subsequent years. We wish, they would continue to do so and if not better the process in near future.

14. RESULT :-

Appeal is disposed of with the above observations without any order as to costs.

15. DIRECTION :-

Urgent xerox certified copy will be given to the parties, if applied for.

Kalidas Mukherjee, J:

I agree.

[ASHIM KUMAR BANERJEE, J.]

[KALIDAS MUKHERJEE, J]