Insurance Co. Ltd. Bombay v. *Bachan Singh* (1), the insurance company could not be held liable unless judgment was obtained against the insured person who had taken the policy of insurance. Apart from that, there was no issue either, claimed by the claimants, in the alternative, that the accident had taken place on account of the rash and negligent driving of the car by Jarnail Singh. In the absence of any such plea and an issue in this behalf, it could not be successfully argued on behalf of the claimants that they were entitled to any compensation from the insurance company. It is true that every presumption would be raised against the insurance company because it failed to produce a copy of the policy in this Court, in spite of the opportunities being afforded, but the said presumption is not available in the absence of the pleadings by the claimants in their claim petitions that Jarnail Singh, the driver of the car, was rash and negligent in driving and that the accident had taken place due to the rash and negligent driving of the car by the car driver.

9. In these circumstances, all the appeals fail and are dismissed with no order as to costs.

S.C.K.

Before : M. M. Punchhi, J.

VANEET DHILLON,—*Petitioner.*

versus

PANJAB UNIVERSITY,—*Respondent.*

Civil Writ Petition No. 3735 of 1987

December 16, 1987

Panjab University Calendar Vol. III 1985—Chapter XXX (C) Para 10,—Prospectus Paragraph 5(b)—Petitioner placed under compartment in B.Sc.I (Non-Medical)—Applied for Pre Entrance Test—B.Sc. result of petitioner modified on revaluation—Effect of such revaluation—Petitioner eligible for examination—Cancellation of candidature—Validity of such cancellation.

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(1) 1982 P.L.R. 280.

Held, that there hardly seems to me a valid reason for sticking to an artificial state of affairs and not do what is desirable to be done and keep the prospects of the candidate in jeopardy. The language of paragraph 5(b), as is plain is very exacting in nature, seemingly permitting no exceptions in any circumstances. The prospectus is not a scripture and common sense is not inimical to interpreting and applying the guidelines therein. Paragraph 5(b), as it seems to me, except to the effect that it is arbitrarily convenient for the University to do so, lacks common sense and fairness and given the inviolability can lead to grave injustice.

(*Paras* 9 *and* 12)

Held, that paragraph 5(b) provides that eligibility of the candidates will be determined only on the basis of the original result of the qualifying examination held in 1987 and not on the result after re-evaluation. Yet re-evaluation is part and parcel of the scheme of examinations. The concept of re-evaluation presupposes error and likely correction. Now, for the purposes of paragraph 5(b), where there be an error or not, the original result of the qualifying examination is taken as good despite the fact that under the University Calendar afore-adverted to the re-evaluated result would supersede the original result. Though the University has pleaded that the general rule of re-evaluation would not apply to the principles embodied in paragraph 5(b) yet on principle it does not appear to make any substantial distinction. Rather it would lead to very undesirable results.

(Paras 9 and 12)

Petition under Articles 226/227 *of the Constitution of India praying that in exercise of its extra-ordinary jurisdiction under Article* 226/227 *of the Constitution of India, this Hon'ble Court be pleased to issue* :—

(*i*) *rule nisi;*

(*ii*) *direct the respondents to transmit to this Hon'ble Court the entire relevant record;*

(*iii*) *quash Annexure P.7 and direct the respondent-Panjab University to permit the petitioner to appear in the pre-Entrance Test to be held on 5th July,* 1987.

(*iv*) *Issue any other appropriate writ order or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case.*

(*v*) *Filing of certified copies of the Annexure P-1 to P-7 may kindly be dispensed with.*

(*vi*) *A copy of the writ petition has been delivered at the office of the Registrar-respondent along with the forwarding letter.*

(*vii*) *Allow costs of the petition.*

It is, further prayed that the petitioner be allowed to appear in the pre-Entrance Test scheduled to be held on 5th July, 1987 at her own risk.

Arun Nehra, Advocate, *for the Petitioner.*

J. L. Gupta, Sr. Advocate with Subhash Ahuja, Advocate, *for the Respondents.*

JUDGMENT

Madan Mohan Punchhi, J.

1. These are two identical writ petitions in which the relief sought is common. They would be disposed of by a common order. It would, however, be convenient to take into account the facts giving rise to one of them i.e. CWP No. 3735 of 1987 and leaving aside the other i.e. CWP No. 3801 of 1987.

(2) Petitioner Vaneet Dhillon appeared in B.Sc., Part-I (Non-Medical) examination held in April, 1987 by the Panjab University. Her result was declared on May 19, 1987. In the result card issued to her, it was shown that she had scored 22 marks only in the Physics written examination. Pass marks required for Physics written examination were 35 and she was, therefore, placed in compartment in Physics. Since she was not satisfied with the evaluation, she applied for re-evaluation of her marks the same day i.e. May 19, 1987, with the goal in mind to compete for admission in the Engineering Courses, she required re-evaluation of her Physics paper most expeditiously. She sent reminders to the University on May 25, 1987 and June 5, 1987. The University responded that her application for re-evaluation of answer-book was under process and that her result when finalised would be communicated to her. The re-evaluation ultimately was not done on June 20, 1987, as claimed by her, but on June 27, 1987, as suggested by the respondents.

3. The Panjab University holds a Pre-Entrance Test (hereinafter referred to as PET) for admission to the Engineering Course

in the Colleges affiliated to the Panjab University. According to the prospectus issued by the Panjab University for PET, the minimum qualification for eligibility to take the test is that the candidate must have secured 50 per cent in the aggregate of Physics, Chemistry, Maths and English in B.Sc. Part-I examination.

4. The last date to submit applications on the prescribed forms for appearing in the PET was June 25, 1987. By that date the re-evaluated result had not been communicated to the petitioner. She submitted her application disclosing these facts to the concerned University Authorities. The examination was to take place on July 5, 1987. Before the date of the examination, however, the re-evaluated result became available. She had secured sufficient pass marks in Physics and her percentage was 56.5 in aggregate. It is plain from these facts that though she was not eligible literally on the date of the application i.e. June 25, 1987, but was eligible by the date of the test i.e. July 5, 1987. The University authorities, however, denied her the candidature in PET and informed her that her candidature had been cancelled because under clause (b) of paragraph 5 of the Prospectus for the PET examination of July, 1987 she was ineligible. Clause (b) of paragraph 5 of the Prospectus reads as follows :—

> "(b) Eligibility of the candidates will be determined only on the basis of original result of the qualifying examination held in 1987 and not on the result after re-evaluation. However, candidates who obtained the required percentage of marks in the qualifying examination, as a result of re-evaluation, may appear in the Pre-Entrance Test in a subsequent year, provided otherwise eligible."

The petitioner had perhaps in mind Chapter XXX(c) of the Panjab University Calendar Volume III 1985 wherein paragraph 10 provides that the score on re-evaluation supersedes the original score. Paragraph 12 provides that if as a result of re-evaluation a candidate passes at the examination, he or she shall be eligible to seek admission to the next higher class within 10 days of the communication of the re-evaluation result to him/her. Paragraph 14 provides that the result of re-evaluation, whether favourable or unfavourable, shall be binding on the candidate who applies for re-evaluation. Thinking that the result on re-evaluation had superseded the original

result, entitling her to sit in the PET, she approached this Court by means of this petition and obtained on motion of her petition an interim order from the Motion Bench on June 29, 1987, to the effect that she shall be permitted to appear in the test scheduled to be held on July 5, 1987, at her own risk. Under orders of this Court, it is stated that she appeared in the PET. The petition was admitted on July 23, 1987, and was ordered to be listed the following day before me along with the connected petition. By that time the return of the respondents had been filed which would presently be adverted to.

(5) I heard these petitions together and reserved judgment on July 30, 1987. In the meantime it was brought to my notice that both the petitioners had passed their PET entitling them to compete for admission in the Engineering Colleges within the domain of the Panjab University. A consequent, order was thus passed that in case each petitioner successfully competes in getting admission to any of the Engineering Colleges, it shall be subject to the result of the writ petitions.

6. The respondent-University relies on paragraph 5(b) of its Prospectus and says that it is inviolable. It is maintained that the petitioner who was ineligible on the date of the application would remain ineligible even if on re-evaluation she acquired the qualification before the actual holding of the test. Such plea is suggested to draw support from a decision of the Supreme Court in *Charles K. Skana and others* v. *Dr. C. Mathew and others* (1), and a Single Bench decision of this Court in *Mrs. Daisy Narula* v. *The Government of Punjab and others* (2).

7. The principal plea as raised on behalf of the petitioner in these circumstances is that paragraph 5(b) of the Prospectus is arbitrary, unfair and unreasonable, for it persists maintaining of an artificial state of affairs and prohibits the removal of the artificiality brought about even though irrefutable reasons exist for the purpose.

8. Learned counsel tried to draw strength from a decision made by me in (*Ravinder Pandey* v. *Panjab University* (3), in

(1) AIR 1980 S.C. 1230.
(2) AIR 1984 (3) S.L.R. 690.
(3) C.W.P. 3209 of 1985 decided on July 16, 1985.

which the facts were almost identical. The decision, however, was made on a settlement. The Panjab University conceded before this Court that as a special case the University had waived the objection to the eligibility of the then petitioners to appear in the PET and accordingly they were conceded to be entitled to appear in the test fixed for July 17, 1985, as also to its result. Further, it was conceded that the pass percentage of the then petitioners in Pre-Engineering examination shall, as a special case, be the result as modified by the re-evaluation. Learned counsel for the petitioner urges that there is no ground not to confer the same benefit on the petitioner when such concession was extended to some candidates of the yester years. On behalf of the University, it has been asserted that that was a special case, but since the University is faced with such a situation every year it would like a judicial pronouncement on the subject. So to revert back, attention has to be focussed — as to whether paragraph 5(b) of the Prospectus is unfair and arbitrary, liable to be struck down or modified.

9. It deserves mention that the Prospectus provides a list of examinations, passing of which determines eligibility for the PET Paragraph 5(b) provides that eligibility of the candidates will be determined only on the basis of the original result of the qualifying examination held in 1987 and not on the result after re-evaluation. Yet re-evaluation is part and parcel of the scheme of examinations. The concept of re-evaluation presupposes error and likely correction. Now, for the purposes of paragraph 5(b), whether there be an error or not, the original result of the qualifying examination is taken as good despite the fact that under the University Calendar afore-adverted to the re-evaluated result would supersede the original result. Though the University has pleaded that the general rule of re-evaluation would not apply to the principles embodied in paragraph 5(b) yet on principle it does not appear to make any substantial distinction. Rather it would lead to every undesirable results. Here are two illustrations :

(i) Suppose a candidate is eligible on the basis of the original result of the qualifying examination. He seeks re-evaluation expecting more marks or improvement of division. He sits in the PET and is declared successful. Furthermore, he gets admission in an Engineering College. The re-evaluated result declares him fail. It goes

without saying that the University will obviously cancel his result in the PET and the consequent admission in the Engineering College, for it is the superseded result which will govern the situation. To hold the qualifying examination as sacrosanct for consequential purposes would lead to many undesirable results.

(ii) Suppose a candidate is not eligible for the PET on the basis of the original result of the qualifying examination and suppose the original result of the qualifying examination was prepared wrongly, negligently or deliberately to serve other ends. Of what assistance is the re-evaluated result to the candidate even if he is declared eligible after the date of the submission of the application. It would be a case of great injustice, especially when the error and correction is to be made by the same authority.

Illustrations like these can be multiplied and they go to show that the University basically agreeing with the sound principle of re-evaluation, on providing paragraph 5(b) in the Prospectus wishes to have the erroneous result stuck to the candidate, merely because, as suggested by it, it cannot complete the re-evaluation well in time lest the PET gets delayed. This hardly seems to me a valid reason for sticking to an artificial state of affairs and not to what is desirable to be done and keep the prospects of the candidate in jeopardy. The language of paragraph 5(b), as is plain, is very exacting in nature, seemingly permitting no exceptions in any circumstances. But as said by the Supreme Court in *Charles K. Skaria's case* (supra) the Prospectus is not a scripture and common sense is not inimical to interpreting and applying the guidelines therein. Paragraph 5(b), as it seems to me, except to the effect that it is arbitrarily convenient for the University to do so, lacks common sense and fairness and given the insolability can lead to grave injustice. In order to survive it must have reasonable exceptions as otherwise meet its death under Article 14 of the Constitution.

10. The observations in the much relied upon *Charles K. Skaria's* case (supra) do go to show that the eligibility to candidature in the context of the selection therein lay emphasis on its being acquired by the date of the application and not thereafter. That

was a case in which some candidates to the Medical Course were given 10 per cent additional marks on the basis that they were Post Graduate diploma holders. Before the Supreme Court nothing reasonable nor arbitrary was suggested to the adding of those 10 marks for holders of diploma on the date of the selection. Those candidates had appeared in the examination for diploma but their results had not been declared. The results were declared after the date of the submission of the applications but before the Selection Committee set to deliberate the respective merits. It is in that context that the Supreme Court observed as follows :—

> "..... But to earn this extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later, Proof of having obtained a diploma is different from the factum of having got it. Has the candidate in fact, secured a diploma before the final date of application for admission to the degree course That is the primary question. It is prudent to produce evidence of the diploma alongwith the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second.

And then again :

> "..... To sum up, the applicant for post-graduate degree course, earns the right to the added advantage of diploma only if (a) he has completed the diploma examination on or before the last date for the application, (b) the result of the examination is also published before that date. and (c) the candidate's success in the diploma course is brought to the knowledge of the selection committee before completion of selection in an authentic or acceptable manner ....."

Here, the petitioner has completed his examination of eligibility before the last date for the application. The result of the examination though published is *inchoate*, because not only is the re-evaluation permitted but has actually been sought for. Thirdly, the candidate's success in the qualifying examination has substitutedly and not newly come into existence before the selection started i.e. before the PET. Therefore, it becomes clear that the

candidate has done all that she could do. Her claim for the PET was before the same authority as was the re-evaluating authority. The ball was thus in the court of University. Contra-distinctly the result of the diploma examination was in the hand of one and selection of another in *Charles K. Skaria's* case (supra). That case on facts is thus totally distinguishable. The observations so made by th Supreme Court in the context of those facts cannot *mutatis mutandis* apply to the facts of the present case. There both the matters were with different authorities — both independent of each other. Here it is one and the same authority i.e. the University.

11. In *Mrs. Daisy Narula's* case (supra) this Court quashed the appointment of a lecturer relying on *Charles K. Skaria's* case (supra) because on the date of the application invited for appointment to the post the incumbent had not acquired the requisite qualification of M.A. in Dance. On facts, it was held that she was not eligible to be considered for the post in question. The reason which prevailed with the Public Service Commission, of the University having delayed the result, was not accepted by this Court. It was viewed as if the Commission had arbitrarily changed the date of the application and as if on the date of the acquisition of the qualification the application had been made. That case, to my mind, is also a case on its own facts. Two different authorities were in the picture, one declaring the result delayedly and the other holding the selection. To repeat, it is emphasised here that in the instant case it is one and the same authority i.e. the University, who holds the PET at its own chosen time and declares the re-evaluated result again at its own chosen time. Being the master of both the shows it has to introduce an element of reasonableness in the whole set up : something which would be in consonance with justice and fair play. It cannot be permitted to have the best of both worlds, merely because it is convenient for it. It cannot be allowed to be independent of itself.

12. Thus, for the aforesaid reasoning, as at presently advised, I have considered it prudent to let paragraph 5(b) of the Prospectus remain alive, subject to the following qualifications/exceptions :

(i) The University is directed to schedule its re-evaluation of papers within such time as reasonably possible so that

the result of re-evaluation can, in any case be available before the date set for the PET.

(ii) If the re-evaluation result is available before the date set for the PET, the re-evaluated result shall substitutedly govern the eligibility.

(iii) In case the re-evaluated result is not available by the date set for the PET, the candidate shall provisionally be allowed to sit in the PET subject to his candidature being regulated after the declaration of the re-evaluated result, and

(iv) the qualifications and exceptions aforementioned be enlivened by suitable alterations/amendments in the University Calendar as also the prospectus as, otherwise, paragraph 5(b) of the prospectus would come within the mischief of Article 14 of the Constitution being arbitrary, unreasonable and unfair, tainted with the vice of discrimination.

For what has been said above, this petition is fated to be accepted and a direction is issued to the University to regulate the candidature of the petitioner on the re-evaluated result since that result had been announced prior to the holding of the PET. The interim orders permitting the petitioners to appear in the PET at their own risk were also passed by this court before the date set for the PET. The petitioners are thus held entitled to the substituted result and the consequential benefits. The petitioners shall have their costs.

S. C. K.

Before V. Ramaswami, C.J. and Ujagar Singh, J.

RAGHURAJ SINGH AND OTHERS,—*Petitioners.*

versus

THE STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 9809 of 1987

January 4, 1988.

Constitution of India, 1950—Art. 14—Petition by untrained Masters—Some of them qualifying B.Ed. examination after original