

**Court No. - 40**

**Case :-** SPECIAL APPEAL DEFECTIVE No. - 494 of 2020

**Appellant :-** Shiv Prasad Duvey And 3 Others

**Respondent :-** State of U.P. and Another

**Counsel for Appellant :-** Satyaveer Singh

**Counsel for Respondent :-** C.S.C.,A.K.S.Parihar

**Hon'ble Manoj Misra,J.**

**Hon'ble Rohit Ranjan Agarwal,J.**

**(Delivered by Hon'ble Manoj Misra, J.)**

1. This intra court appeal arises from a judgment and order of a Single Judge, dated 7.12.2019, passed in Writ-A No.19486 of 2019 by which the writ petition filed by the appellants along with 36 others for a direction upon the U.P. Secondary Education Service Selection Board, Prayagraj (for short the Board) to declare their result of written examination held, for the post of Trained Graduate Teacher, has been dismissed.

2. In the office report dated 04.02.2020, the appeal is reported to be beyond time by 29 days. However, it appears, there were other defects also, which were removed later.

3. As in the meantime Covid-19 pandemic had set in, we deem it appropriate to condone the delay. The delay condonation application No.1 of 2020 is thus allowed. The delay in filing the appeal is condoned. Office to assign regular number to the appeal.

4. The facts giving rise to this appeal, in a nutshell, are that the writ petitioners (i.e. who filed Writ A No.19486 of 2019), out of which four are before us as appellants, had not correctly darkened/ filled the bubbles/ circles of the OMR sheets, either in respect of their roll number or booklet series number or both, even though it was mandated by the instructions provided therein. Consequently, their OMR sheets were not

evaluated. The appellants 2 to 4 before us are those who had filled their roll number correctly in numerals, in the rectangular box provided in the OMR sheet, but had not correctly darkened/ filled the bubbles/ circles below to confirm the roll number filled in the rectangular box. Whereas appellant no.1, in addition to the above-noted mistake committed by the appellants 2 to 4, had also committed a mistake in respect of filling the Booklet series number. As a consequence whereof, their answers in the OMR sheets were not evaluated. The learned Single Judge dismissed the writ petition by observing that the controversy in issue is squarely covered by a Division Bench decision of this Court in Special Appeal No.834 of 2013 and Special Appeal Defective No. 117 of 2014.

5. We have heard the learned counsel for the appellants; the learned standing counsel for the respondent no.1; and Sri A.K.S. Parihar for the respondent no.2 (the Board).

6. Before we proceed to notice and evaluate the submissions made before us, it would be appropriate to examine as to what was held in the two decisions relied by the learned Single Judge in the impugned judgment. In **Special Appeal No.834 of 2013 (Ram Manohar Yadav v. State of U.P. & others, decided on 30.05.2013)**, the appellant who had applied for selection on the post of a teacher had not filled the online application form correctly. He applied for rectification of the mistake which was not accepted. Thereafter, he filed a writ petition which was dismissed. Aggrieved therewith, he filed Special Appeal before a Division Bench of this Court. While dismissing the appeal, the Division Bench observed: *“if prospective teacher can not even correctly fill up the simple on line application form for his employment, it is obvious what he is going to teach, if appointed. There are certain decisions cited on this issue. But none of them deal with this aspect whether under the discretionary jurisdiction of the Court under Article 226 of the Constitution of India such incompetent persons should be allowed to*

*play with the future of the next generation.”*

7. In **Special Appeal Defective No.117 of 2014 (Km. Richa Pandey v. Examination Regulatory Authority and another, decided on 18.02.2014)**, the petitioner had not filled the column of language in which she had attempted answers in the OMR answer sheet. The learned Single Judge found that in absence of mention of language in which the answers were attempted, OMR sheet would not be acceptable for evaluation. The Division Bench, on appeal, called for the records and found that there were clear instructions that if requisite columns are not filled correctly, the answers will not be evaluated. Thus, while upholding the decision of the learned Single Judge, the Division Bench observed:

*“The OMR sheets are provided to the candidates to speed up evaluation through help of computer. In case we accept the argument of learned counsel for the petitioner that the language in which the petitioner had written essay could be checked up by the examiner before feeding answer book into computer, the entire process of expediting the results will be lost. Where OMR sheets are to be examined with the aid of the computer, it is not advisable and practical to direct that each OMR sheet should be checked by the examiners and the columns, which have not been filled up may be filled up by the examiner himself with the aid of the language used by the candidates for writing essay. We are informed by Standing Counsel that about seven lacs candidates had appeared in the test.*

*With such large number of candidates appearing in TET Examination 2013 it would not have been possible nor it was feasible for examiners to look into the answer sheets individually before feeding them into computer for correcting any mistakes.*

*We agree with the reasoning given by the learned Single Judge that where the applicant is not capable of correctly filling up the form, she is not entitled to any discretionary relief from the Court.”*

8. The learned counsel for the appellants has contended that the facts of the two cases noticed above were different inasmuch as here the appellants have correctly mentioned their roll numbers in the numeral form within the column provided in the OMR sheet though the bubbles/ circles of the OMR sheet were not correctly darkened/ filled, which was just a human error and for which the appellants are not to be penalised. He placed reliance on a Division Bench decision of this Court in **Archana Rastogi (Km) v. State of U.P. and others, 2012 (3) ADJ 219 (DB)** in which though the applicant had incorrectly filled up marks obtained in the High School Examination but had enclosed the marks-sheet with the application, therefore, upon finding that the marks disclosed were less than what she had produced certificate of, applying the principle of human error, in equity, the Court allowed correction. The learned counsel for the appellant submits that the same principle would apply here and, therefore, the appellants were entitled to the relief sought in their petition.

9. *Per contra*, Sri Parihar, the learned counsel for the respondents, submitted that there were clear instructions that if any of the fields, including relating to roll number, is incorrectly filled then the OMR sheet would not be evaluated. He submits that OMR sheets have been universally adopted by examining bodies that conduct public examinations at a large-scale with a view to expedite the process of evaluation. Data, including answers rendered by darkening the circles or bubbles appearing on an OMR sheet, is scanned by scanners and the scanned data is evaluated with the aid of software. In case, there is a mistake or mismatch of the data furnished, the software rejects the OMR sheet. Therefore, a candidate has to take full and complete care not only in reading the instructions but also in following them because it is not feasible for an examining body, in an examination of such magnitude, to manually evaluate each answer sheet. He submitted that where mistakes

occur in filling of OMR sheets, the mistakes are not condonable. The view of this Court as well as the Apex Court has been consistent in this regard. In support of his submission, in addition to the decisions relied upon by the learned Single Judge in the impugned judgment, Sri Parihar has cited the following decisions: **(a) (1992) 2 SCC 206 : Karnataka Public Service Commission v. B M Vijay Shankar; (b) Jai Karan Singh and 52 others v. State of UP and 4 others: Special Appeal No.90 of 2018, decided on 25.4.2018; (c) Ramesh Chandra & 17 others v. The State of UP & 2 others: Special Appeal No.247 of 2020, decided on 09.06.2020.**

10. We have given our thoughtful consideration to the rival submissions. Upon perusal of the record, we find that in so far as the appellants 2, 3 and 4 are concerned, on their part, there appears a solitary mistake, that is with regard to erroneous darkening/ filling of the circles/ bubbles, relating to their Roll number, in the OMR sheet. In respect of appellant no.1, in addition to above, there is erroneous filling of booklet series number as well. The argument on behalf of the appellants is that this a pure human error and as there existed a roll number column in the OMR sheet to be filled in numerals, and the numerals were written correctly, therefore, if there is a manual check of their Roll numbers, their result can easily be declared.

11. No doubt, it does appear to be a hard case, at least for the appellants 2, 3 and 4. But the issue here is whether the writ court should interfere in such matters, particularly when instructions are clear and categorical that an erroneous entry in the OMR sheet in respect of certain fields of information sought, including Roll number, would render the answer sheet invalid. The said issue is no longer *res integra*. In **Jai Karan Singh's case (supra)**, a Division Bench of this court, dealing with a similar issue, observed:

*“The writ petitioners had admittedly given incorrect information in the OMR Answer sheet relating to either the Registration Number, the Roll Number or Question Booklet Series and the Language attempted and that is why their results have not been declared. The manual check can be conducted but the larger issue before the Court is whether such a direction should be given at all. In our opinion, it is for the examining body to work out a method for the recruitment process and the manner in which Answer Sheets is evaluated and once clear instructions have been given to the candidates that incorrect information relating to Registration Number, Roll Number, Question Booklet Series and Language attempted would lead to non-declaration of the result, the examining body should not be directed to conduct a manual check.... This would take substantial time and ultimately result in causing delay in the declaration of the result. It is this delay that was sought to be eliminated by requiring the candidates to give reasons in the OMR Answer Sheet so that they could be scanned by electronic means.*

*.....The error committed by the candidates cannot be said to be minor in nature. It is the Registration Number, Roll Number that determines identity of the candidates. The candidates who appeared in the examination were mature students and were to be appointed as Assistant Teachers in institution. They should have read the instructions that was issued time and again and should have correctly filled the entries relating to Roll Number, Registration Number, Question Booklet Series and Language attempted. The entries were, however, inaccurately filled as a result of which the scanner has not been able to process the result.”*

*(Emphasis Supplied)*

Similar view has been taken by another Division Bench of this Court in **Ramesh Chandra’s case (supra)** by observing: *“if this Court permits the appellants and persons alike to have manual corrections in the OMR sheet, then that will frustrate the entire purpose of using technology for expeditious completion of the process of selection.”*

12. The submission of the learned counsel for the appellants

that Roll Number was written correctly in numerals therefore there was no justification to reject the answer sheet only because the circles/ bubbles were not filled correctly does not appeal to us. Because, it is from the colouring or darkening of circles/ bubbles in the OMR sheets that the scanner is able to process the information. The mention of Roll Number in numerals might be to keep a double-check on foul play. However, whatever the purpose might be, we need not speculate on that. The fact remains that once the instructions were clear and were to apply universally to all candidates, if the error as per the instructions is fatal, a hands-off approach by the Writ Court is justified, hence we find no good reason to interfere in the matter. Consequently, the appeal is **dismissed**.

**Order Date :-** 08.4.2021  
Sunil Kr Tiwari