

(1990) 07 BOM CK 0022
In the Bombay High Court
Case No : Writ Petition No. 593 of 1990

Arshdeep

APPELLANT

Vs

Maharashtra State Board of Secondary and Higher Secondary
Education, Nagpur Divisional Board

RESPONDENT

Date of Decision : 13-07-1990

Acts Referred:

Constitution of India, 1950 — Article 14
Evidence Act, 1872 — Section 115
Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 — Section 36
Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 — Regulation 88(1)

Citation : (1991) 1 BomCR 375 : (1991) 1 MhLj 304

Hon'ble Judges : V.A. Mohta, J; H.D. Patel, J

Bench : Division Bench

Advocate : D.K. Deshmukh, for the Appellant; V.V. Naik, A.G.P., S.G. Aney, Mohan Sudame and Parchure for respondent No. 1, for the Respondent

Judgement

V.A. Mohta, J.—In this writ petition by a XIIth standard student, two contentions are raised.

(i) clause 88(1)(a) and (b) of the Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 (the Regulations) relating to compulsory attendance in the class by a regular student is unconstitutional.

(ii) Having handed over an Admission Card for the examination and allowed her to appear for the practical examination, the respondent No. 1 Board is estopped from prohibiting her participation in the rest of the examination under the undisputed factual background.

2. In our view, contention No. (i) has to be repelled and contention No. (ii) has to be upheld for the reasons that follow.

The petitioner Ku. Arshdeep Puri was prosecuting her studies as a regular

student of XII class in St. Joseph's Convent Junior College, Nagpur of which respondent No. 2 is the Principal. XII standard examination is conducted by the Maharashtra State Board of Secondary and Higher Secondary Education, Nagpur Divisional Board, Nagpur constituted under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 (the Act). The petitioner submitted an application form for appearing for that examination to the Divisional Board through respondent No. 2. Respondent No. 1 issued an Admission Card to the petitioner through the respondent No. 2 and pursuant to the said Admission card, the petitioner appeared for the Practical Examinations held by the respondent No. 1 in the subjects of Chemistry, Textile and Biology upto 8th March, 1990. Theory examination was to commence on 15th March. On 13-3-1990 the father of the petitioner was informed by respondent No. 2 that as per telegraphic communication received from respondent No. 1, the petitioner's application for appearing for the examination was rejected due to shortage of attendance in the class for the second part of the session. This petition was filed on 14-3-1990. By an ad-interim order the petitioner was allowed to appear for the theory papers as per the Admission Card originally issued, but her result was withheld. Accordingly the petitioner has appeared for the examination but her result is not declared. According to the respondent No. 1, while her attendance in the class in the first session was 78.20% the attendance in the second session was only 50% which is below the minimum required and when this deficiency was noticed, the application form was rejected. According to the petitioner, absence for such a longer period in the second session was due to intermittent illness which was beyond her control, the correct factual position about her attendance was available with the respondent No. 1 and she was not guilty of any fraud or misrepresentation.

3. Respondent No. 1, while not disputing the correctness of the factual stand taken by the petitioner, has sought to defend the action on the ground that the shortage below 60% was not condonable for any reason under clause 88 of the Regulations. Its further stand is that the preparation of Admission Cards started as usual even before the academic session was over in view of a large number of students appearing for the examination and they were dispatched to the respondent No. 2 as soon as they were prepared. In the heavy rush of work scrutiny of the application was not possible before commencement of the examination and as soon as the shortage of attendance in the second session was noticed on 13-3-1990, a telegraphic communication was sent to the effect that the shortage was not condoned and hence the Admission Card should be returned for cancellation.

4. First, about the validity of clause 88(1)(a) and (b) of the Regulations, which reads thus:

"88. Eligibility of Regular Candidates-

A candidate attending the second year of Junior college class, shall be eligible to appear for the Higher Secondary Certificate examination to be held at the end of

the second year of Junior college on fulfilling the following conditions:

(1)(a) In the case of March or April Examination, he should have attended the Final standard of one or more recognised Junior Colleges for not less than 75 per cent of the working days separately in two different parts, viz., in the first part from the opening day, of the academic year to the 15th October and in the second part i.e. from 16th of October to the 15th of February next following:

Provided that, a candidate who does not fulfil the requirement of the minimum attendance of 75 percent, separately as stated above, and whose deficiency is not condoned and thus is not admitted to the examination or whose very application for admission to the examination is not forwarded by the Head of the Junior College on account of likely deficiency in attendance of whose application was withdrawn under Regulation 93(8) shall make up the deficiency in attendance either.

A- during the first part of the next academic year, if he intends to appear for the examination in the following October or November.

OR

B-during the first or second or both parts of the next academic year, if he intends to appear at the examination in the following March or April.

(b) The Divisional Chairman, may for special medical reasons or circumstances beyond the control of the candidate as certified by the Head of the Institute, or suo-motu, condone a deficiency in the percentage of attendance prescribed under clause (a) above, upto 15 per cent. The Divisional Chairman may on the merit of the case condone such deficiency either in the part I or in part II or in both the parts separately :

Provided that, the Divisional Chairman on recommendation of the Head of the Junior College concerned may condone deficiency in attendance beyond 15 per cent, in respect of a student who represents India or Maharashtra State in any International, National or Inter-State Sports or games held in India or abroad to the extent the student is required to remain absent from the Junior College for such participation".

The Regulations are made by the State Board by virtue of authority conferred u/s 36 of the Act. Under the regulations, the candidates are classified into three categories (i) "regular" (ii) "private" and (iii) "repeater". Eligibility to appear for the Board Examination for each of the category of candidates is different. Clause 89 of the Regulations deals with eligibility of private candidates and clause 90 with eligibility of repeater candidates. Clause 88 of the regulations deals with eligibility of regular candidates a class to which the petitioner belongs. Academic session has two parts (1) commencing from the opening date of the academic year to 15th October and (ii) from 16th October to 15th February. Attendance in the final standard of one or more recognised junior colleges for not less than 75% of the working days separately in two parts is one of the conditions of

eligibility. The Divisional Chairman is empowered to condone the deficiency in the percentage of attendance upto 15% for special medical reasons or circumstances beyond the control of the candidate as certified by the Head of the Institution or suo-motu. No one has jurisdiction to condone the deficiency above 15% except under the circumstances and to the extent enumerated in the proviso to Clause 88(1)(b). Proviso relates to a student who represents the country or the State in any International, National or Inter-State Sports or games. To the extent the student is required to remain absent from the Junior College for such participation and that too, if so recommended by the Head of the Junior College, the Divisional Chairman may condone the deficiency beyond 15%.

5. The gist of the submission of the petitioner is that:

The requirement of attendance has no nexus to the object of the regulations and it is arbitrary and/or unreasonable. Known measure of candidates's progress and merit is the examination and he should be given the chance of demonstrating the progress and merit irrespective of his attendance in the classes. Consequently there is no justification for making attendance a sine-qua-non for eligibility to appear for the examination. In any case, there is no justification whatsoever to limit the power of the Divisional Chairman to condone the deficiency only upto 15%. There can be a case of a brilliant student who was always keen to attend the classes but for reasons beyond his control, could not make up the attendance upto minimum of 60% in both the parts. He loses the right to appear for the examination even though he is certain to get through the same if permitted to appear. Even in such genuine cases the Divisional Chairman is helpless in the matter and a student loses valuable 1/2 year only for a technical and unnecessary formality. Unlimited discretion should have been given to the Divisional Chairman or any other high authority in the matter and absence of such a provision in the Regulations makes it unreasonable and, therefore, violative of Article 14 of the Constitution.

6. The submission though attractive in the first flush, is fallacious. It proceeds upon the wrong assumption that holding the examination is the only object of Secondary or Higher Secondary education and equipping the student with ability to pass the examination is the only object of giving education. Examination is not an end in itself but only a means to achieve the real object of education, which is to help the all round development of a personality of a student in formative years and consequently, as George Palmer has very succinctly put "to be able to do what one has not done before", Bookish knowledge is not all. There are enumerable advantages of regularly attending the classes. Attendance aims at instilling into the alumni sense of discipline, brotherhood and regard, by being together with fellow students under the guidance and supervision of the teachers. Indeed close and intimate personal association between the teacher and the taught has always been recognised as an ideal form of education since years in our country. Extra-curricular activities like debates, sports, symposiums, sight seeing, etc. are the regular features of college activities and they have as

important a place in education as curricular activity and syllabus, if not more. A student is deprived of all these advantages by not attending the college. We, therefore, do not see any unreasonableness or arbitrariness in the policy decision in making attendance mandatory for a regular student and deficiency below certain limit a disqualification to appear for the examination-irrespective of the reasons for the said deficiency. A student no doubt loses some time, but it is not only in the interest of education but also in his own interest. In the ultimate analysis he is the gainer. Some limit has to be put. It is put at 60% in the Regulations. Such limit also reduces the chances of exercise of discretion arbitrarily.

7. Then, why exception in the case of a sportsman, is the poser made on behalf of the petitioner. Now, sports is a part and parcel of education. Only higher grade sportsmen who spend time in participation of the games held at particular level are given the benefit under proviso to Rule 88(1)(b). Benefit permitted to be given is restricted only to the extent of time so spent and that too on recommendation of the Head of the College. This exception has a nexus to the object of the Regulations and is not unreasonable. Moreover, these are all matters which essentially fall within the realm of policy in which the Courts are not normally expected to trespass. Thus clause 88(1)(a) and (b) has a clear nexus with the object sought to be achieved by the Regulations and the Act under which they are made, and is perfectly valid and constitutional.

8. Now, about the second point relating to estoppel. Considering the large number of students appearing for the examination of the Board, the process of preparing the admission cards for the examination has to start early. Therefore, mere preparation of the admission cards and their dispatch to the Institutions, which under the Regulations are agents of the Board, cannot clothe the student with the right of being admitted in the examination, as held by this Court in the case of *Rajashri Chaudhari v. Head Master Manibhai Gujarathi Junior College, Amravati*, W.P. No. 436 of 1984 decided on 29-6-1984 and *Ashish v. Secondary & Higher Secondary Education Board* 1985 M.L.J. 826. But in the instant case what has happened is that the admission card was handed over to the student and on that basis she was allowed to take part in the practical examination held by the Board. In our view, under the circumstances the decision of the Board to reject the application for admission to the examination on the ground of deficiency of attendance in the manner in which it was done was most improper. The petitioner was not guilty of any fraud or mis-representation in making the application and hence she could not be prohibited in the midst of the examination from appearing for the rest of the examination. Why should she be allowed to suffer for the delay on the part of the Board in noticing the deficiency. Permitting such a course is to ignore the well established principle of equitable estoppel which must operate against the Board under the circumstances.

9. A situation similar to this has arisen even before and there is a plethora of precedents on the subject. The case of *Purshottam Das Dulichand Zargar* and

Another Vs. Board of Secondary Education Wright Town and Others, . related to a student who was allowed to appear for the practical examination on the basis of the Admission Card issued by the Board which was cancelled before the theory examination on the ground that the Board had noticed on examination of his application that he was deficient in attendance, which deficiency was neither condoned nor was condonable under the new Regulations that applied. Same practical difficulty about inability to examine admission forms before commencement of examination was raised by the M.P. Board in that case also. The Court ruled:

"The fact that the applicant was allowed to appear for practical examination and was allotted a roll number must be taken as having the necessary implication that the deficiency in the petitioner's attendance was such which could be condoned and was condoned under the regulations which were applicable to him. Therefore, if the new regulations applied to him, then it must be taken that the deficiency in the applicant's attendance was such which was within the power of the Chairman to condone.

For all these reasons, we are of the opinion that the opponents were under an obligation to permit the petitioner to take theory examination when they had allowed him to appear for the practical examination in Physics and Chemistry and when he had been allotted a roll number".

The above decision was followed by that High Court in the case of Premji Bhai Ganesh Bhai Kshatriya Vs. Vice Chancellor, Ravishankar University and Others, .

10. Leading case on the subject is a decision of the Supreme Court in the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, . That was also a case inter-alia of shortage of requisite percentage of attendance in the L.L.B. Part-I course. It was neither a case of suggestion false nor of suppression of facts by a student. He was allowed to participate in LL.B. Part-I examination and so also in the subsequent examination but his result was withheld on the ground that he had failed to attend the prescribed course of lectures and was, therefore, not qualified to appear for L.L.B. Part-I examination. The Supreme Court held that, once the student was allowed to appear at the examination the Board had no jurisdiction to cancel the candidature for that examination. The following observations are to the point:

"It is, therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear."

In that case the Supreme Court approved the view taken by the M.P. High Court in the case of Premji Bhai (supra).

11. In the case of Arkendu Sinha and Others Vs. Bihar School Examination Board

and Another, , also it is held that once a student is allowed to appear for the examination on the basis of an Admission Card issued by the Board, his result cannot be withheld on the ground that he was not eligible to appear for the examination or that he had not fulfilled certain requirements.

12. As recently as in April 1990, the Supreme Court had once again an occasion to deal with the situation of this type in the case of Sanatan Gauda Vs. Berhampur University and others, . The student was allowed to appear for L.L.B. examination but his result was withheld on the ground that he was not qualified to be admitted to the L.L.B. course in view of his securing less than required 40% aggregate in the Degree Examination. Orissa High Court had upheld the decision of the Board. The Supreme Court set aside the said judgment holding firstly that since the student was a Post-Graduate, the rule of aggregate of 40% in the Degree course did not apply and even if it applied, the University was estopped from refusing to declare the result of the examination, having permitted him to appear in the examination in the background and the fact that the student had disclosed his aggregate marks alongwith the application for admission to the college, and was not guilty of any fraud or misrepresentation. It is observed:

"It was bounden duty of the University to have scrutinised the matter thoroughly before permitting the appellant to appear at the examination and not having done so it cannot refuse to publish his results."

13. Ratio of all these cases was sought to be distinguished on behalf of the respondent No. 1 on the basis of some difference in the factual backgrounds and the difference in the language of the rules that applied in each of those cases. But we are unable to see how that difference affects the principles laid down.

14. Our attention was invited on behalf of both the parties to clause 91 of the Regulations dealing with the subject of cancellation of admission to the examination. It is unnecessary to dwell upon that clause since admittedly neither power under that clause has been exercised nor the procedure laid down followed.

15. To conclude, the petition is allowed partly. Clause 88(1)(a) and (b) of the Regulations is held to be valid. But the decision of respondent No.1 of cancelling the admission card is held to be invalid. The said decision is, therefore, quashed and set aside. Since the petitioner has already appeared for the examination, respondent No.1 is directed to declare her result forthwith. Rule made absolute in the above terms. No order as to costs.