

(2015) 03 BOM CK 0045
In the Bombay High Court
Case No : Writ Petition No. 951 of 2015

Bharat Ghanshyam Chhabada	Vs	APPELLANT
Maharashtra State Board of Technical Education and Others		RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Citation : (2015) 4 ABR 311 : (2015) 4 ALLMR 322 : (2015) 4 BomCR 411 : (2015) 4 MhLj 611

Hon'ble Judges : K.R. Shriram, J.;Anoop V. Mohta, J.

Bench : Division Bench

Advocate : Y.P. Narvankar, for the Appellant; R.V. Govilkar, Advocates for the Respondent

Judgement

Anoop V. Mohta, J.—Rule made returnable forthwith.

Heard finally by consent of the parties.

2. The Petitioner has challenged order dated 13 January 2015 passed by Respondent No. 1-Maharashtra State Board of Technical Education, Mumbai, (for short, "the Board"), whereby, the Petitioner's Winter 2014 examination was cancelled and further debarred from Summer 2015 Examination, on the ground of alleged malpractice during Winter 2014 examination.

3. Basic order dated 1 January 2015 was not addressed and/or specifically communicated to the Petitioner. It is stated to be communicated to the Institute-Respondent No. 2 and also stated to be uploaded on the concerned Board's Website. The communication dated 13 January 2015, is therefore, without any reason. The reasons, even if any, though are mentioned in order dated 1 January 2015, the Petitioner denied all the allegations by letter dated 15 January 2015. The process for submission of the examination forms started from 16 January 2015 and the last date was 6 February 2015. The Petitioner, therefore, filed this Petition on 27 January 2015.

4. Respondent No. 1, by affidavit in reply dated 10 February 2015 resisted the claim and placed on record the various materials including the basic order dated 1 January 2015 to justify their action/order. Respondent No. 2 also by an affidavit dated 12 March 2015 filed supporting reply and submitted that an appropriate order may be passed in terms of prayers so made by the Petitioner.

5. The Petitioner is an engineering diploma student of Respondent No. 2 institution, where he had taken admission on 26 July 2012 for pursuing the Computer Science course. He has successfully passed and completed I, II, III and IV Semesters of this Course with ATKT. The Petitioner had enrolled himself for V Semester for winter 2014 examination, which was scheduled for 21 October 2014 and subsequently he was issued hall ticket. The Petitioner had appeared for the examination on the scheduled date. But, on 17 December 2014, Respondent No. 2 was totally shocked and taken aback when he received a letter from Respondent No. 1 where it was stated that due to malpractice in the said examination, he was asked to appear before Wadia Institute of Technology, Pune at 11.00 a.m. on 23 December 2014. On 17 December 2014, Respondent No. 2 issued a notice to the Petitioner, as directed by Respondent No. 1. On 18 December 2014, Respondent No. 2 addressed a letter to Respondent No. 1 and stated that no such malpractice has been committed and categorically denied all the allegations of malpractices as made by Respondent No. 1. On 23 December 2014, subsequently, the Petitioner appeared before the enquiry committee. However, no opportunity of any hearing was given to the Petitioner and even the result of the said enquiry was also not intimated to the Petitioner. On 24 December 2014, the Petitioner was not given any document for perusal nor his explanation was asked regarding the same. On the contrary, the Petitioner was compelled and pressurized to write the answers to the questionnaire. The Petitioner, being shocked with such reckless attitude of Respondent No. 1, immediately addressed a letter dated 24 December 2014 to Respondent No. 2 recording all the grievances and also stated that he has denied all the allegations at the end of the said Questionnaire.

6. The Manual for Conduct of Examination and Regional Assessment Center issued by the Board deals with all relevant and necessary aspects, including duties and responsibilities of officers and other staff appointed for the conduct of examination. We are concerned with the procedure of conduct of examination. The guidelines so provided for handling copying, misconduct, malpractice and impersonation cases, elaborated various steps, which need to be taken note of by the concerned officers. The duties and responsibilities of officers and other staff are also elaborated, so also the Role and responsibilities of Supervisor and the Examiners. The basic clauses of the guidelines including, 22.3.3, 22.3.18 and 22.3.19 read as under:-

"22.3.3 Officer-in-charge and Controller of exam shall seize answer book/s and copying material if any of alleged examinee and shall take the examinee and block supervisor/reporting officer to the control room."

"22.3.18 A show cause notice, in the prescribed form, shall be issued to the examinee alleged to be involved in malpractice or use of unfair means or misconduct, by the officer-in-charge. The notice shall inform the place, date and time for the examinee to remain present for further enquiry and to give his statement in the matter. Receipt of the show cause notice from the examinee shall be obtained and copy of the same shall be sent to the enquiry officer along with other evidence and documents through distribution center."

"22.3.19 The show cause notice shall be served on the alleged examinee immediately, in any case before he is allowed leave the examination center on that day. In case the alleged examinee leaves the center without accepting the show cause notice, it shall be sent to him by registered post."

7. The format of "Notice of Enquiry", Format No. 15A, also provides the details to be added in the form before commencement of the inquiry. The format of "Police Complaint", is also prescribed in Format No. 14.

8. After hearing both the parties, including going through the reply filed by the Respondents, we have noted that no show cause notice, as contemplated under the Manual/guidelines, was issued in the format so prescribed. This itself means there was no communication of the basic material information and/or documents/papers collected and/or wants to use against the Petitioner by the Board. Notice dated 17 December 2014 contents as under:-

"As per the letter no MSBTE/ROP/ENQUIRY COMMITTEE/7002 dated 17/12/2014, you are hereby directed to be present at enquiry center no.0008 (Cusrow Wadia Institute Of Technology, Pune) on 23/12/2014 at 11.00 a.m.

Exam seal no. 382339."

9. The Petitioner attended the same and never admitted the alleged malpractice, even in the statement so recorded. The consistent stand of the Petitioner was of total denial to the alleged malpractice. The learned counsel appearing for Respondent No. 1 read and referred all the documents which are part of the affidavit filed by them in support of their action. We have also gone through the same. At no place, the Petitioner admitted to have committed the so called malpractice. The questions and the statement as recorded in the back-ground of not providing any adverse material and or supposed to be used by the Board against the Petitioner, apart from any specific charges and/or case immediately after the date of incident, goes to the root of the matter.

10. There was no even police complaint lodged in view of the specific provisions available under the Maharashtra Prevention of Malpractices at University, Board and other Specified Examinations Act, 1982 (for short, "Act of 1982"). The submission is made by Respondent No. 1 that in such matters, show cause notice is not necessary and in the present case, the statement so made, recorded by the Respondent's Officers, after giving so called notice to the Petitioner to contest the same and therefore, there was sufficient compliance of the principle

of natural justice, though they have not strictly followed the Manual and/or guidelines so published for such purposes. This submission is unsustainable.

11. The Respondent-Board cannot add and/or supplement their action by filing an additional material for the first time in the Court, specifically when the submission is made by the learned counsel appearing for the Petitioner that even order dated 1 January 2015, was never communicated to the Petitioner along with the action/impugned order dated 15 January 2015. The Petitioner, therefore, when received a copy of the impugned order was not even aware of the reasons given by the Board, though he has specifically denied the charges. The basic requirement of giving full and equal opportunity to the person/party against whom the department wants to take action, in view of above, is totally missing. We are also concerned with the discipline and the disciplinary action and/or action against the students who found guilty. In the given case, it is not possible to collect all the materials, but still the basic principle of law needs to be followed by all the concerned, including Respondent No. 1. The Manual/guidelines so published, in our view, just cannot be overlooked, as it has the foundation of the Central and the State Acts. The clause so referred above, including the format which according to us, ought to have been taken care of and even before taking such drastic action against the Petitioner and specifically in such cases. If no equal, fair and full opportunity is given to the Petitioner and/or student, specifically when the consistency in statement of denial remained intact till the end, the action so taken, therefore, in our view, is in breach of provisions of law, apart from the principle of natural justice.

12. The submission of the learned counsel appearing for the Respondent-Board that the finding so given and/or arrived at, based upon the information and/or material so collected need to be seen first before going into the technical aspect of issuance of show cause notice and opportunity, is not acceptable. If there are breaches committed by the Respondent No. 1 in holding the inquiry of this nature, even collection of the information behind the back of the Petitioner and not giving the opportunity at the appropriate stage and not even followed their own practice and procedure after the incident of the alleged malpractice, the material, as well as, the information so collected also cannot be used in such fashion without giving the opportunity to the Petitioner to deal with the same.

13. We have also noted that order dated 1 January 2015, initially not referred the roll No. of the Petitioner i.e. 382339. The same was corrected and initialed later on, on 7 January 2015, whereas, the order is dated 1 January 2015. Even in the basic paragraph, Roll No. of the Petitioner is wrongly mentioned. Therefore, it shows non-application of mind by Respondent No. 1 to the fact, as well as, to the law before passing the impugned order.

14. Therefore, taking over all view of the matter and in the interest of justice, we are inclined to quash and set aside the impugned order dated 13 January 2015 and further order permitting the Petitioner to appear in the VI semester oral and written examination. We do not want that Petitioner to suffer because of illegal

action/order of the Board.

15. At this stage, the Petitioner is directed to file affidavit in respect of date of submission of examination form and also the attendance of the Petitioner, stand over to 25 March 2015.

16. To file reply to the affidavit filed on 25 March 2015, at the request of the learned counsel appearing for Respondent No. 1, stand over to 26 March 2015. Respondent No. 2 is also directed to file his additional reply to the affidavit. Again on 26.03.2015, at the request of Respondents, matter is kept on 27.03.2015 for filing affidavits.

27/03/2015:

17. Based upon the oral order passed in this matter on 24.3.2015, both the parties have filed additional affidavits on 27.03.2015 to justify the case of granting order/direction for permitting the petitioner to appear in oral and written examination for VI semester which is scheduled to be commenced from 30.3.2015 to 11.4.2015. The schedule of written examination is as under :-

18. Though there is an opposition from respondent no.1-Board in this regard but as the concerned institution-respondent no.2 by affidavit has placed on record the material to justify the said order/permission to allow the petitioner to participate and/or appear in the examination as even attendance part is completed. The respondent no.1 is not agreed and denying the case of the petitioner with regard to the attendance and term work. However, for the reasons and the supporting affidavit filed by the respondent-management, in the present case only, we are passing the order permitting the petitioner to appear in the VI semester examination in question.

19. For this purpose, we also direct respondent no.1 to declare the result of V semester as we are allowing the petitioner to appear for VI semester for the reasons so recorded in the order. The respondents to take the necessary steps by accepting the examination form and the requisite formalities be completed before allowing the petitioner-student to appear in the examination.

20. As we are passing the order today and the time is short, the concerned respondents are directed to complete the formalities so that the petitioner will be in a position to appear in the oral and written examination.

21. Having once held that action of respondent no.1 is unsustainable, we are inclined to pass the consequential order to avoid further delay and in the interest of petitioner-student. Therefore, following order :-

ORDER

(a) Impugned order dated 13th January, 2015 passed by the Board-Respondent no.1 is quashed and set aside.

(b) The concerned respondent is hereby directed to permit the petitioner to

appear in the VI semester examination, oral and written examination, which is scheduled to be held from 30.3.2015.

(c) The petitioner to complete the formalities by 30th March 2015. The statement is made on instructions, by the learned counsel for respondent no.1 that in view of peculiarity of this case, the institution -respondent no.2 and the petitioner need to go and submit the form with respondent no.1-Regional office at Pune. The concerned office to accept and permit the petitioner to fill examination form on-line if required.

(d) The respondents, after submission of form, will complete further formalities as we have already directed to permit the petitioner to appear in the VI semester examination, oral and written examination.

(e) The petition is disposed of accordingly with liberty.

(f) Rule made absolute accordingly with liberty.

(g) No costs.

Parties to act on the basis of an authenticated copy of this order.