

(1990) 11 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 1731 of 1990

Chaudhari Anilkumar Narottam and Others

APPELLANT

Vs

Puja Sane Guruji Vidya Prasarak Mandal's Polytechnic and Others

RESPONDENT

Date of Decision : 09-11-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 1 BomCR 659 : (1991) 93 BOMLR 328 : (1991) 1 MhLj 1164

Hon'ble Judges : Sujata Manohar, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : M.S. Mohite, for the Appellant; K.B. Raghuvanshi, Assistant Government Pleader, S.M. Dandekar, for respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—The seven petitioners before us are the students of Pooja Sane Guruji Vidya Prasarak Mandal's Polytechnic, Sahada, Dist. Dhulia. The case of the seven petitioners as far as the limited issues that fall for determination in this petition are concerned are all identical. The petitioners were, at the relevant time, doing a course in Diploma in Engineering which is a 3 year course. The Diploma in question was to be awarded by respondent No. 2, the Board of Technical Education, Maharashtra State. The present petition arises out of orders dated 2nd March 1990 which were conveyed to the petitioners by the Principal of the institution, informing them that pursuant to an enquiry held by the Board of Technical Education, that a decision has been taken to award certain punishments to the petitioners and to certain other students who have incidentally not challenged the decision of the Board, to cancel the results of the May 1989 examination of the candidates and furthermore, not to permit the candidates concerned to appear to three subsequent examinations.

2. The course in question is a three-year course and a student is required to appear for an examination at the end of each year. The student is required to

pass in seven subjects in each of the three examinations. As far as the First Year is concerned, a student who fails in as many as three subjects is permitted to keep terms for the Second Year and the student is also permitted to appear for the subjects in question at any subsequent examination. There is no limitation with regard to the number of attempts that the student may make for purposes of passing in the subjects in which the student has been unsuccessful. The Rules, however, provide that the student shall not be permitted to commence the Third Year course of study unless the student has cleared all the seven subjects pertaining to the First Year. As far as the present petitioners are concerned, admittedly, they were unsuccessful in two subjects viz, Applied Mechanics and Elements of Mechanical & Electrical Technology at the May 1987 examination. The petitioners thereafter appeared in December 1987, at which examination, they once again failed. The same position obtains as far as their attempt at the subsequent examination in May 1988 is concerned and it appears from the record that the petitioners failed at the examination held in November 1988. Thereafter, the petitioners had filled up their application forms for one more attempt at the May 1989 examination with which we are concerned. It is relevant to point out here that it was crucial as far as the petitioners were concerned that they cleared the two subjects at this examination as otherwise, they would not have been permitted to commence their course of study for the Third Year. This aspect of the matter assumes some importance. The record further indicates that the petitioners were declared successful at the May 1989 examination in the two subjects. Subsequently, however, a complaint was received by the Board that certain students from the first-respondent institution who had not sat for the examination in May 1989 had been declared successful at that examination. Pursuant to this complaint, the Board instituted an enquiry to be conducted by a special committee headed by the Principal, Government Polytechnic, Jalgaon. A show cause notice dated 11-12-1989 was addressed to the petitioners and to all those students in whose cases the Board had detected certain irregularities. In the show cause notice in question, it had been pointed to the petitioners that they had appeared for certain subjects at the May 1989 examination, that they had remained absent when the examination was conducted and furthermore, that they had been instrumental in showing in the marksheet pertaining to that examination certain old and incorrect marks wrongly indicating that they had in fact passed in the subjects in question at the earlier examination held in November/December 1988. Pursuant to the service of the show cause notice on the petitioners, petitioners Nos. 1, 5, 6 and 7 remained present before the Enquiry Committee whereas the remaining petitioners did not respond to the notice. It is relevant at this stage to point out that even the show cause notice very specifically contain the charge, that the students in question had not appeared at the examination in May 1989, that none of them appeared to have disputed this position either in writing or orally.

3. In the course of the enquiry, the petitioners have certain statement in writing, both to the enquiry committee as also to the Principal, in substance, admitting

the charge that was levelled against the. Subsequent to this, on the recommendations of the enquiry committee, a decision was taken to cancel the May 1989 examination of the candidates in question and not to allow them to appear at the three subsequent examinations. It is this decision that is under challenge in the present petition. Prior to the stage, when the petition came to be admitted, the learned Vacation Judge by his order dated 30-4-1990 directed that the petitioners be permitted to appear for the Third Year Diploma in Engineering Examination which was to be held in May 1990, pursuant to which direction, the present petitioners were permitted to appear for the examination.

4. On behalf of the petitioners, a civil application was thereafter taken out before us, containing a prayer that the respondents be directed to declare the results of the petitioners. Mr. Raghuvanshi, learned Assistant Government Pleader, appearing on behalf of the State raised an objection at that stage and pointed out to the Court that having regard to the seriousness of the charges against the petitioners, that the authorities have a valid objection to the declaration of the results and a joint application was made to us that main petition be taken up for hearing. The petition itself is, therefore, placed on Board and taken up for final hearing.

5. Mr. Mohite, learned advocate appearing on behalf of the petitioners has, in the first instance, challenged the validity of the show cause notice that was issued to the petitioners on 11-12-1989. Mr. Mohite has contended that the show cause notice in question does not conform to legal requirements, that it was not specific and furthermore, that the condition in the show cause notice which prescribes that the petitioners will not be permitted representation through third-parties are both unfair and unjust and against the principles of natural justice and that the enquiry stands vitiated on this ground. The principal challenge of Mr. Mohite was with regard to the wording of the show cause notice wherein it is stated that in the marks relating to the may 1989 examination, old and incorrect marks have been shown. It may his submission, that if the old marks had been shown, that there was no question of the petitioners, being declared to have passed because admittedly, they have failed in the previous examinations and consequently, the statements contained in the show cause notice did not convey to the petitioners the gravamen of the charge and the accusation that was levelled against the petitioners. Mr. Mohite further submitted that there was a further breach of the rules of natural justice in so far as the petitioners were not furnished with the material that would be used for purposes of establishing the charges in the proposed enquiry. It was his contention that the basic duty lay on the respondents to furnish to the petitioners all relevant documents, statements and other material on the basis of which they proposed to sustain the charges in question.

6. In support of his submissions, Mr. Mohite has relied on the decision of the Supreme Court reported in AIR 1971 S.C. 75 in the case of Suresh Chandra Chakravarty v. The State of West Bengal, In that decision, the Supreme Court

held that on the basis of vague and identifite charges and failure to supply statements of allegations, the removal of the Government servant would be void and inoperative. In the first instance, it is necessary for us to record that the decision in question pertained to a service matter and is, therefore, distinguishable from the present case on facts. Apart from this, as far as the present case is concerned, we are fully satisfied that a perusal of the show cause notice will indicate that the nature of the charges that had been made against the petitioners are sufficiently and adequately set out in the chargesheet and it is incorrect to contend that the petitioners were unaware of the nature of the charge that had been made against them. This is further supported by the fact that none of the petitioners filed any reply disputing the basic charge against them viz.that they had remained absent at the May 1989 examination and that inspite of this, they had been issued mark-sheet, purporting to indicate that they had passed the examination on the basis of some abricated marks had been entered thereon ostensibly showing that they had cleared the examination on an earlier date viz., in November December 1988.

7. As regards Mr. Mohite's grievance regarding non-supply of the material, once again, it is necessary to point out that this is a case where none of the petitioners have disputed the allegations made against them in the charge sheet. On the contrary, they have in their statements, in writing, very clearly admitted that the were a party to certain malpractices that were the subject matter of the enquiry. It was open to the petitioners, if they so desired, to have asked for the material on which the respondents were placing reliance.

8. Furthermore, for purpose of fully satisfying ourselves that no injustice of even the slightest order was done to the petitioners, all of whom are students, we have in Court perused the entire record pertaining to this case and satisfied ourselves that in the first instance, there is unimpeachable documentary evidence to indicate that the petitioners had remained absent at the May 1989 examination. This is evident from the fact that the Board maintained the practice of obtaining the signature of the candidates who are present at the examination hall and the record indicates that the signatures of the petitioners are not noted on the attendance sheet and that the examiner concerned has marked the present petitioners absent and that he has also encircled the respective roll numbers on the roll sheet and mentioned in the statement thereunder about the number of absentees. These records were shown to Mr. Mohite and it was pointed out to him that in the light of this material, there can be absolutely no doubt about the fact that the petitioners had remained absent in the May 1989 examination. We have thereafter brought it to his notice that the petitioner have, deliberately and consistently, right through the present proceedings taken up a false plea, both in the pleadings as also in the submissions made on their behalf, that they have remained present at the May 1989 examination and to this extent, this Court will be required to take a serious view of such deliberate and false statement that has been made. It is on the basis of this material that the petitioners obtained an interim order from the learned Vacation Judge, permitting

them to appear for the May 1990 examination. In the light of what has been pointed out by us, there is no substance in the grievance made by Mr. Mohite that the enquiry held was vitiated or that it was defective in any manner. We are satisfied that there was sufficient and substantial compliance with the rules of natural justice and that no injustice, even of a slightest nature, has been done to the petitioners.

9. Dealing with this aspect of the case, Mr. Raghuvanshi, learned Assistant Government Pleader has submitted before us that a distinction must be made between the disciplinary proceeding in relation to educational institutions and in particular, while dealing with misconduct or malpractices in relation to examinations. He has relied on the Division Bench decision of this Court in the case of Hansa Babulal Dave v. University of Poona, reported in 1983 MLJ 627 . In that case, the Division Bench has laid down that the essential minimal requirements of the principles of natural justice that must be complied with by an authority while conducting enquiries against students are that the person affected must be apprised of the charges of unfair means and that he must be given an opportunity to make a representation to explain the circumstances held against him and that the authority conducting the proceedings must not be biased and should act in good faith. While dealing with this proposition, it would be useful to refer to the Division Bench decision of the Orissa High Court Brajendra Maharana and Others Vs. The Utkal University, in the case of Brajendra Maharana & others v. The Utkal University, The Court has called out the principles that are applicable to an enquiry of the present type which are being reproduced below :

"(1) The enquiry before the domestic tribunals in the matter of adoption of unfair means by examinees is of a quasi-judicial character and has to be undertaken in accordance with the principles of natural justice.

(2) The essential principles of natural justice that are to be followed by an authority dealing with a case of the present nature are as follows :

(a) The person affected shall be apprised of the charges of unfair means.

(b) He must be given an opportunity to make a representation and to explain the circumstances appearing against him; and

(c) The authority conducting the proceedings must not be biased and should act in good faith.

(3) Rules of natural justice not being embodied rules, it is open to the authority concerned to evolve its own procedure for acquainting the person concerned with the charges and the material on which they are founded, and also for affording him an opportunity of explaining these charges. The procedure will necessarily vary with the facts, circumstances and nature of the case, constitution of the authority dealing with it and the rules under which it functions.

(4) A delinquent-examinee can ask for more information and details with regard

to the material or evidence which is sought to be used against him. If he does not ask for further information, he cannot make a grievance out of it, unless it is shown that any prejudice has been caused on account of the procedure adopted.

(5) Enquiries conducted by quasi-judicial Tribunals cannot be equated to the trials in ordinary courts of law.

(6) Where directed evidence of adoption of unfair means is not available, the question will have to be considered in the light of probabilities and circumstantial evidence.

(7) In dealing with the validity of the orders passed by the University authorities the high Court does not sit in appeal over the decision of the authority concerned. Its jurisdiction is limited. If the order in question is not supported by any evidence at all the High Court may interfere; but the conclusion that the impugned order is not supported by evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify that conclusion.

(8) It is primarily for the University authorities to come to a decision after taking into consideration the explanations submitted by the delinquent examinees and other circumstances. High Court would not ordinarily interfere with the decision if it is based upon relevant considerations and is arrived at after affording adequate opportunity to the candidates concerned."

10. Applying these decisions to the facts of the present case, we are satisfied that the petitioners before us were made aware of the nature of the charges against them, that they were afforded an adequate opportunity to put forward their defence, if any, and that the decision taken by the authorities in this case does not suffer from any degree of bias. In fact, as far as the third aspect of the case is concerned, there is not even a suggestion made by the petitioners that the decision is biased. In passing we would like to deal with the submission of Mr. Mohite that the petitioners are young students and that they should have been permitted representation by third parties or by an Advocate. We are not impressed by this submission because the present enquiry pertained to a very simple issue concerning malpractices and a fraud that was indulged in by students, the students in question are not young children and were fully in a position to understand the nature of the charge and to put forward whatever defence if they so desired. In fact, in the present case, having fully understood the gravity of the situation, the students themselves have stated in writing that they have approached a certain person and paid a prescribed amount of money to him for purposes of having the mark-sheets manipulated. In this view of the matter, we are satisfied that there is no miscarriage of justice either in the conduct of the enquiry or with regard to the decision taken in the present case.

11. Mr. Mohite has invited our attention to the decision of the Kerala High Court, reported in AIR 1967 Ker 121 in the case of Babu Ahmad Kabir v. The Principal, Medical College, Kozikode and another. In that case, following a complaint by a

lady student, an enquiry came to be held against the petitioner and the petitioner was expelled from the Medical College. It is relevant to point out that in that case, the complainant had not named the petitioner in her original complaint and it was through subsequent investigation that the authorities decided to proceed against the petitioner. It is with regard to this crucial aspect of the matter since the petitioner has not admitted the charges that the Kerala High Court took the view that it was absolutely essential for the tribunal to have confronted the petitioner with the material on the basis of which the charge had been levelled against him. As far as the present case is concerned, the facts are distinguishable in so far as in the present case, there is no dispute about the fact that the relevant documents viz. the mark-sheets of the May 1989 examination were of the petitioners themselves and furthermore, that the petitioners did not dispute the correctness of the charges. Had they contended that they had nothing to do with the manipulation, it would have been incumbent on the Enquiry Committee to have confronted them with the material on the basis of which they concluded that the petitioners were abettors to the act of manipulation of the mark-sheets. The authorities were fully justified in the present case in proceeding on the written admission of the petitioners and, therefore, in our judgment, the said decision is not at all applicable to the facts of the present case.

12. Mr. Mohite has also relied on the decision of the Supreme Court Management of Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal, Rajasthan, Jaipur and Another, in the case of pertaining to Management of the Northern Railway Co-operative Credit Society Ltd., Jodhpur v. Industrial Tribunal Rajasthan, Jaipur & another, In this case, the Supreme Court set aside the dismissal of the employee concerned even though the employee had not remained present and had not taken part in the enquiry. The Supreme Court in that case, on an examination of the record, came to the conclusion that where the enquiry itself disclosed certain very basic and unsustainable regardless of the fact that the petitioner had not remained present before the enquiry. On the basis of this decision, Mr. Mohite contends that it was the basic duty of the respondents to have held and conducted the enquiry in consonance with principles of natural justice and in keeping with the requirements of the rules and that if he is in a position to point out that the same was defective, that the punishment ordered against the petitioners is liable to be set aside.

13. As indicated earlier, we have ourselves looked at the relevant records pertaining to all aspects of the enquiry and we are fully satisfied that in the first instance, it is clearly indicated that the petitioners remained absent at the May 1989 examination. The records pertaining to the original mark sheets which were sent to the College for purposes of filling up the marks of the previous examination also indicate that it was at this point of time that the fabricated marks have been entered in the original mark sheets, taking advantage of the wrong procedure that the Board was then following as a consequence of which, when these marks were transposed into the computer, the marksheets for the

May 1989 indicated that the petitioners had passed at the previous examination. It is necessary to point out that these records, coupled with the admission of the petitioners before the Enquiry Committee and before the College Principal, leave no doubt about the fact that the principles enunciated by the Supreme Court, which, in the first instance, were principles in relation to matters pertaining to service law would not apply to the facts of the present case. In our judgment, there is no inherent defect in the holding of the present enquiry and consequently, the conclusions that have emanated therefrom are wholly and fully justified.

14. Mr. Mohite thereafter submitted that the enquiry report in question has not been furnished to the petitioners and secondly, that none of the findings had been furnished to them. He, therefore, submitted that the petitioners have been seriously handicapped as far as not only the conduct of their defence was concerned but also as far as the question pursuing their remedy before this Court was concerned. We are unable to accept this submission because, admittedly, at no point of time were the respondents requested to furnish any of this material to the petitioners. Furthermore it is relevant to point out that even though the present petition was filed in the month of April, 1990, at no time thereafter, even during the pendency of these proceedings, was any demand made from the Advocates representing the respondents that any material be made available. Apart from this, we are satisfied that no prejudice of any type has been caused to the petitioners by the non-supply of this material.

15. The last submission advanced by Mr. Mohite was in the relation to the punishment that has been awarded to the petitioners and it is the contention of the learned Advocate that from the order that has been passed, the Court must conclude that there has been no application of mind and that consequently, the order should be set aside on this ground. The submission is basically to the effect that the order prescribed that the May 1989 examination as far as the delinquent students are concerned stands cancelled and that they are debarred from appearing for the three subsequent examinations. It is the contention of Mr. Mohite that at the time when this order was passed in the months of March 1990, that not only had the May 1989 results been declared but that a subsequent examination had also been held in the month of November 1989 and that consequently, the authorities had not applied mind and had sought to debar the petitioners from all examinations that had already taken place.

16. We have considered this submission advanced by Mr. Mohite and we have heard the learned advocates appearing on behalf of the respondents with regard to this aspect of the case and we are of the view that the authorities were fully justified in imposing punishment and that having regard to the fact that they were dealing the cases of students that the authorities had taken into account the effect of the punishment order and had, therefore, desired to keep the repercussions of the same to the very minimum. It is for this reason that having found that the results in relation to the May 1989 examination had been

manipulated, that the authorities have cancelled those results and that they have, thereafter debarred the petitioners from the immediately succeeding there examinations. There is good reason for this because under the system that is prevalent, there is a certain degree of carry-forwards as far as the marks obtained in the previous examinations are concerned and, therefore, if the results of the May 1989 examination stand cancelled. Under these circumstances, the punishment order is perfectly valid and we are not prepared to hold that there is non-application of mind in the passing of the order. On the contrary, it is our considered view that the acts of misconduct being so serious, the authorities seemed to have been most benevolent in imposing a lenient punishment.

17. In dealing with cases of the present type, which discloses misconduct of a grave nature, that too on the part of students, who are pursuing a course of study leading to a professional degree/diploma, the Court is required to take serious note of the consequences that are inevitable from such situations. In the present educational system prevalent in this country, where the ultimate evaluation of skill and proficiency, and above all, the degree of knowledge that is a pre-requisite for the award of a professional qualification, is the examination or set of examinations on the basis of which these factors are judged. Any misconduct or malpractice touching those examinations or affecting such evaluation would result in unqualified and unworthy students being awarded degrees. Not only is this totally detrimental and disastrous to the educational system but it presents a serious danger in so far as the consequences to society where such unqualified persons who have obtained degrees through dubious means acquire jobs in responsible positions. The disasters that could follow and possibly many of those which are now taking place due to incompetent and unskilled supervision and accidents which are the result of incompetency in different sectors are only one set of disturbing consequences. The deterioration in standards of honesty and integrity at all those work stations is also to be expected if these tendencies are to go unchecked. As a parallel and immediate consequence, is the manifest unfairness that results within the student body whereby those students who honestly labour are totally demoralised when they find their counterparts who indulge in malpractices are able to pass the examinations and secure degrees sometimes without even appearing for an examinations as has happened in the present case. The degree of competition at higher levels being so intense, the honest students are relegated to a disadvantageous position, when such unfair means are practiced, resulting thereby in those of the former category who deserve to get into higher studies and into higher positions of employment being deprived of their legitimate entitlements, thereby turning the value system virtually upside down. In this view of the matter, we consider of indiscipline and malpractices of the present type must be dealt with firmly and in a manner that will provide a deterrent. The latter becomes necessary because this Court must take judicial notice of the fact that unfortunately, such unfair practices are on the increase.

18. We find it necessary to observe that it is most unfortunate that in cases. of a serious nature pertaining to acts of misconduct and that too malpractices in relation to important professional examinations of the present type, that students are now making it a habit to approach the courts of law and question the correctness of the disciplinary action instituted against the. Undoubtedly, in cases of arbitrary action or in the case of patent injustice to a student, a Court would certainly interfere. But, we are constrained to observe that on the facts of the present case, there appears to be absolutely no justification even for the filing of the present petition. We have also recorded the finding that as far as the present petition is concerned, false statements have been made by the petitioners in the petition as also in the affidavit in rejoinder that has been filed in the present proceedings. This is an extremely serious aspect and affects the administration of justice and is a matter, which, to our mind, cannot be allowed to pass. From this point of view, we consider it necessary to direct the Registrar of this Court to issue notices to the petitioners to show cause why appropriate proceedings for perjury should not be instituted against them for having made deliberate and persistently false statements in the course of a judicial proceeding to the effect that the petitioners had appeared for the May 1989 examination in the two subjects in which they had previously failed when in fact it is conclusively established that the petitioners had not been present at the said examination.

19. In the result, the petition fails. Rules is discharged. In the circumstances of the case, the petitioners shall pay costs of the respondents.

20. We hereby clarify that since the petition stands dismissed, there will be no question of the declaration of the results of the petitioners in relation to the May 1990 examination at which they were permitted to appear by the interim orders of the Court.