

(2017) 07 BOM CK 0232
In the Bombay High Court
Case No : 1585 of 2017

Hunar Jasmit Singh Gujral

APPELLANT

Vs

Narsee Monjee College of Commerce & Economics, having its
address at Juhu Scheme, & Ors.

RESPONDENT

Date of Decision : 06-07-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 07 BOM CK 0232

Hon'ble Judges : B.R. Gavai, Riyaz I. Chagla

Bench : DIVISON BENCH

Advocate : Karan Bhosale, Sharon Patole, Manorama Mohanty, A.P. Singh, S.K. Srivastav, Abhishek Tripathi, R.A. Rodrigues

Judgement

1. The Petitioner is a student of the 1st years B.M.S. studying in the Respondent No.1 college. Respondent No.2 is Principal of the Respondent college. Respondent No.3 is the Convener of the Unfair Means Inquiry Committee of the college and Respondent No.4 is University of Mumbai.

2. The Petitioner by the present Petition is challenging the show cause notice dated 20th April 2017 and the impugned order dated 16th May 2017 passed by Respondents Nos. 1 to 3. By the said impugned order, the performance of the Petitioner in the F.Y. B.M.S. Semester - II examination held in April 2017 has been treated as null and void. The Petitioner has been granted opportunity of appearing for the ATKT examination of F.Y.B.M.S. (Theory) in all the courses in Semester - II, which will be held in October / November 2018. The Unfair Means Inquiry Committee on the basis of information available on record and after hearing the Petitioner had concluded that the Petitioner was guilty of "smuggling out and smuggling in of answer book as copying material" and had recommended the above action which was approved by the Principal. The Petitioner has by the present Petition sought the quashing and setting aside of the show cause notice and impugned order as well as consequential reliefs

thereof.

3. Shri Bhosale, learned counsel for the Petitioner began his argument by contending that the Petitioner is academically an excellent student and has relied on her mark sheet issued by Respondent No.1 in support thereof. Shri Bhosale has contended that the show cause notice is vague and in violation of the principles of the natural justice. Shri Bhosale has contended that the Petitioner was not granted an opportunity of meeting the charges which have been found against her and the only mention in the show cause notice is of " possessing a college supplement of the stamp of the previous day i.e. 19th April 2017 and all the written notes of the paper on 20th April 2017, i.e. Business Communication". Shri Bhosale has further contended that the impugned order has also failed to give reasons and has only referred to the finding of the Unfair Means Inquiry Committee which has held the Petitioner guilty of smuggling out and smuggling in of answer book as copying material and has gone to the extent of holding that the Petitioner's performance in all courses at the examination held in April 2017 to be treated as null and void. Shri Bhosale has submitted that the Petitioner was singled out by the Supervisor during the examination on three successive dates i.e. 18th 19th and 20th April 2017. The Petitioner had in fact been provided the supplementary answer sheets by the supervisor on 20th April 2017 and the supervisor had initially refused to give her the supplementary sheets but later provided her with the same and the supplementary sheets had been presigned. According to the Petitioner, the supplementary papers were not available in the classroom and were called for by the supervisor from outside. The Petitioner has in her reply to the Principal brought out these facts and has submitted that the supervisor had after providing the supplementary sheets to the Petitioner questioned the authenticity of the supplementary sheets that he himself had provided. The supervisor confiscated the supplementary sheets and the faculty members of Respondent No.1 were informed and in turn the faculty member, Mr. Conrad called the Petitioner to the staff room. The Petitioner had to leave the examination hall in the midst examination going on. The Petitioner has alleged that the staff members and faculty of Respondent No.1 included the Vice President had surrounded the Petitioner and the Petitioner was allowed to complete examination only after she accepted the version of events stated by the supervisor and signed the show cause notice as well as the pages of the question paper and pages of the main answer sheet as well as the supplementary sheets being used by the Petitioner. Shri Bhosale has contended that the name of the supervisor had not been disclosed to the Petitioner despite her specific complaint about the supervisor's conduct and no action had been taken against him.

4. Shri Bhosale has contended that the entire inquiry against the Petitioner is unfair and in violation of the principles of natural justice. He has further submitted that the Petitioner's results of the courses of Semester II had been withheld by the Respondents and that the Semester III of B.M.S. Courses had started on 5th June 2017. The Petitioner was accordingly seeking urgent interim relief viz. that the Petitioner may be allowed to take admission to Semester III of

B.M.S. Courses and be given credit for all the examinations given by the Petitioner and to retake the examination of Business Communication conducted by Respondent No.1 on 20th April 2017. The Petitioner also sought a stay of the impugned show cause notice and order.

5. Smt. Mohanty, learned counsel appearing for Respondents Nos. 1 to 3 has submitted that every opportunity had been given to the Petitioner to explain her case during the inquiry held by Unfair Means Inquiry Committee. Smt. Mohanty contends that the show cause notice has clearly set out the grounds on which the Petitioner was charged with unfair means. Smt. Mohanty has referred to the various stamps of the college and has pointed out that the stamp which was used on the supplementary sheets was that of the previous date i.e. 19th April 2017 and that although the question paper contained five questions, the supplementary sheets contained answers which were more than the five questions asked. Smt. Mohanty has tendered to the Court the original supplementary sheets on which the Petitioner had written the answers and has been able to demonstrate that the supplementary sheets have been folded at more than one place. Smt. Mohanty has contended that this goes to show that the supplementary sheets could not have been provided to the Petitioner on the 20th April 2017 but must have been brought in by the Petitioner to the examination hall with the prewritten answers. Smt. Mohanty has also contended that the Petitioner has failed to give any proper explanation as to why the supplementary sheets containing the notings of the Petitioner were folded and the only explanation has been given in paragraph 6 of the Affidavit in Rejoinder viz. that the Petitioner tends to fold answer sheets which allows the Petitioner to create sections for better understanding and that can be seen from the previous papers. Smt. Mohanty has also tendered the previous papers written by the Petitioner and has demonstrated that these papers have not been folded by the Petitioner.

6. After hearing the arguments, we observe that the Petitioner appears to have a grievance against the supervisor on three dates i.e. 18th , 19th and 20th April, 2017. However, it appears that the Petitioner had not made any complaint against the supervisor on the previous dates i.e. 18th and 19th April 2017. It was only when the Petitioner was called out of the examination hall by the supervisor upon a complaint being made against her to the faculty member of the college that she had sought to make allegations against the supervisor. We are of the considered view that the Unfair Means Inquiry Committee against whom the Petitioner has no personal grievance has only after giving an opportunity to the Petitioner to defend the charges levied against her in the show cause notice viz. of unfair means, found the Petitioner guilty of the charges viz., "smuggling out and smuggling in of answer book as copying material" and has recommended action which has been approved by the Principal. We are of the considered view that the Unfair Means Inquiry Committee being an independent body has acted in conformity with the principles of natural justice and although the show cause notice on the basis of it could have given more particulars, the

Unfair Means Inquiry Committee has given full opportunity of hearing to the Petitioner and then only the impugned order has been passed. We are also conscious of the fact that in exercising jurisdiction under Article 226 of the Constitution of India, disputed questions of fact as in the present matter cannot be gone into by the Court. It is well settled that the Court exercise restraint in adjudicating disputed questions of fact, particularly in Writ jurisdiction.

7. We are accordingly not inclined to admit the Writ Petition and / or grant interim relief, particularly since various facts have been disputed and these being academic matters are best left to the Unfair Means Inquiry Committee which has already adjudicated the matter and given its finding.

8. We accordingly dismiss this Petition with no order as to costs.