

(1983) 06 GUJ CK 0012

In the Gujarat High Court

Case No : Spl. Civil Application No. 1314 of 1983

Ketan Shivkumar Trivedi

APPELLANT

Vs

Gujarat Higher Secondary Education Board, Gandhinagar

RESPONDENT

Date of Decision : 28-06-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1984 Guj 47 : (1983) 2 GLR 1373

Hon'ble Judges : S.B. Majmudar, J

Bench : Single Bench

Advocate : J.R. Nanavati and Y.N. Oza, for the Appellant; J.A. Shelat, for the Respondent

Judgement

1. The petitioner who had appeared at 12th Standard (Science Stream) examination held by the respondent Board from 2-11-1982 to 9-11-1982

from Jamnagar centre, has filed this petition under Art. 226 of the Constitution being aggrieved by the order of penalty passed against him by the

respondent Board on 7-3-1983 which is at annexure "C" to the petition, pursuant to which the result of his examination for Nov. 1982 has been

cancelled and he has been prohibited from appearing in Std. 12th examination upto April 1984.

2. In order to appreciate the grievance of the petitioner, it is necessary to note a few relevant facts. The petitioner had appeared at 12th Std.

examination through Sharda Mandir School at Jamnagar. His seat number was B-02285. He had appeared in all science group papers from 2-11-

1982 to 9-11-1982. The result of the examination was declared on 30-12-1982. However, so far as the petitioner was concerned, his result was

not declared and was kept reserved. The respondent Board gave a show cause

notice to the petitioner dt. 10-1-1983. It was given in a printed form which contained allegations that when the petitioner had appeared in the paper of Physics on 5-11-1982, he was found to have committed certain misconduct at the said examination. Details of the misconduct given in the show cause notice, were that it was brought out that some of the answers to the questions were copied by the petitioner verbatim from some other student, meaning thereby, from the answer book of some other student. The petitioner replied to the said show cause notice at annexure "A" by his written reply dt. 21-1-1983, annexure "B" to the petition. He denied the charge leveled against him. It appears that thereafter personal hearing was afforded to the petitioner during which he stood by his claim of not having committed any misconduct. It is thereafter that the order at annexure "C" came to be passed against him on 7-3-1983. The petitioner has, therefore, approached this court under Art. 226 of the Constitution for getting suitable relief from this court.

3. Mr. J. R. Nanavati, learned Advocate for the petitioner has raised the following contentions in support of the petition:-

1. That the show cause notice issued to the petitioner is vague and misleading and consequently, all subsequent proceedings are null and void.

2. The inquiry in question was conducted contrary to the principles of natural justice. That the evidence collected by the Board behind the back of

the petitioner was not shown to the petitioner nor was he given any opportunity to explain the same and hence, the inquiry is vitiated and is null and void.

3. That the impugned order is based on no legal evidence and is totally perverse as it is impossible to believe that the petitioner would copy from

the answer book of the candidate having seat No. B 02291 when the petitioner's seat number was 13-02285 which would be, far away from the

place where other candidate was sitting in the class room at the time of the examination.

4. The impugned order is not a reasoned order. Hence also it is liable to be quashed and set aside.

4. The respondent Board had earlier not filed any affidavit in reply at the notice stage. In these circumstances, the learned Judge, J. passed the following

order on 28-3-1983 admitting the petition:-

Though sufficient time was given, other side has not filed affidavit in reply explaining the circumstances narrated in the petition. Under these

circumstances, I am constrained to issue rule. Petitioner will be at liberty to move the court hearing special civil applications for early hearing of the matter"".

This petition, was fixed by me for final hearing when a note was moved on the reopening of this court after summer vacation for getting a fixed date of hearing. That is how it has reached for final hearing before me.

5. The respondent filed its affidavit-in-reply when this matter reached final hearing before me. The petitioner has not chosen to file any affidavit-in-rejoinder. It is in the light of the pleadings between the parties as found from the petition and the affidavit-in-reply that various contentions canvassed by Mr. Nanavati for the petitioner will have to be considered.

6. So far as the first contention Of Mr. Nanavati is concerned, he invited my attention to the show cause notice at annexure "A" and pointed out that the show cause notice was misleading. That in one breath, it stated that the petitioner was caught red-handed on 5-11-1982 when he

appeared in the paper of Physics; while in another breath, the show cause notice stated that it had come to the notice, meaning thereby, notice of

the concerned authority, that the petitioner had copied answers of some questions; from another candidate's answer book. Mr. Nanavati,

therefore, contended that the notice was vague and inconsistent and consequently, the proceedings pursuant thereto were null and void. At first

blush, the aforesaid contention of Mr. Nanavati appears to be well justified. But on further scrutiny, it is found to be unsustainable. The petitioner

himself stated in the petition that the show cause notice was in printed form and it has been clearly stated that details of the misconduct alleged to

have been committed by him were as under and thereafter details of misconducts are mentioned. It is not the case of the respondent Board that the

petitioner was caught red handed at the time of the examination itself. Consequently, the earlier part of the show cause notice has to be read with

the details of the misconduct as mentioned. So far as the details are concerned, the petitioner has been informed that the charge against him was

that in the paper of Physics in which he had appeared on 5-11-1982, he is said to have copied the answers to certain questions from the answer

book of another candidate. Thus, the petitioner was clearly informed about the charge of copying. It is true that the name of the other student is not

mentioned. But at the stage of inquiry and personal hearing, it appears that, the same was brought to his notice as in para 14 of the petition, the

petitioner has stated that he has come to know that another student of Physics having seat No. B 022q] was also found guilty by the respondent

Board for the same charge. Even otherwise, non-mentioning of the name of the student from whom the petitioner had copied some answers by

itself would not vitiate the notice as the petitioner could have called for further information from the Board. Not only that but, in his written reply at

annexure "B", the petitioner made no grievance on the ground that seat number of the other student was not informed to him and, therefore, he was

in any way prejudiced. On the contrary, he gave his reply on merits. Hence, it cannot be said that the show cause notice did not inform the

petitioner about the main ingredients of the charge against him. All necessary details of the alleged misconduct of the petitioner were informed to

him by the show cause notice at annexure A. The first contention of Mr. Nanavati, therefore, cannot be sustained and it stands repelled.

7. That takes me to the second contention. So far as this contention is concerned, Mr. Nanavati is on a firmer ground. It was vehemently

contended by Mr. Nanavati that at the time of personal hearing, petitioner's statement was recorded and the petitioner stuck to his defence that he

had not committed any misconduct. It appears that the respondent Board collected certain material behind the back of the petitioner viz. report of

the examiner as well as report of the building conductor which was called for to see the exact position of the sitting accommodation in the

classroom at the time when the petitioner appeared in the physics paper. Mr. Nanavati submitted that this relevant evidence on which the

examination committee based its conclusion, was kept back from the petitioner and no opportunity was given to the petitioner to explain the same.

Consequently, the decision rendered by the inquiry committee has got vitiated in law. So far as this submission is concerned, the affidavit-in-reply

filed by the Examination-Secretary of the respondent Board is worth noting. In para 5, it has been stated that

the petitioner was called for personal hearing at Rajkot on 25-1-89 before the Exam. Committee. The petitioner remained present in person. The

petitioner has given his explanation before the Exam committee. After considering all the facts and statements of the petitioner and his reply and

perusing the record of the case and also considering the report of the examiner and building conductor penalty Was imposed on the petitioner"".

8. It is, therefore, an admitted fact that reports of the examiner and building conductor were considered by the examination committee before it

passed the impugned order against the petitioner. I inquired of Mr. Shelat for the respondent whether these two reports were shown to the

petitioner at the time when he was called for personal hearing. Mr. Shelat fairly stated that copies of these reports were not shown to the petitioner.

It is, therefore, obvious that the examination committee while it passed the impugned order of punishment against the petitioner did take into

consideration material collected behind the back of the petitioner without giving any opportunity to the petitioner to meet the same or to have his

own say in the matter against the said reports. This has introduced a fatal infirmity in the impugned order of punishment and it must be held that the

petitioner got no reasonable opportunity to have his say in the matter, and to meet the charge of misconduct as leveled against him. In para 14 of

the affidavit-in-reply, it has been stated that principles of natural justice were not violated and a full opportunity of hearing was given to the

petitioner. That the petitioner was explained all the allegations against him during the course of inquiry and he was also shown answer book. The

petitioner was shown documents on which reliance was placed by the inquiry committee. Even though aforesaid averments were made in para 14

of the affidavit-in-reply, Mr. Shelat fairly stated that the reports of the examiner and the building conductor were not shown to the petitioner at the

time when he was called for personal hearing. Consequently, it must be held that the impugned order of punishment is vitiated by a breach of the

principles of natural justice and fair play. On this ground alone, the Impugned order will have to be quashed and set aside.

9 to 11. x x x x

12. Order accordingly.