

(2006) 11 BOM CK 0046

In the Bombay High Court

Case No : Misc. Civil Application No. 843 of 2006 in Writ Petition No. 3928 of 2006

Maharashtra State Secondary and Higher Secondary
Education Board

APPELLANT

Vs

Ku. Khusbu

RESPONDENT

Date of Decision : 13-11-2006

Acts Referred:

Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 — Regulation 104

Citation : (2007) 2 ALLMR 198 : (2007) 1 BomCR 607 : (2007) 1 MhLj 642

Hon'ble Judges : R.V. More, J; D.D. Sinha, J

Bench : Division Bench

Advocate : P.B. Patil, for the Appellant; B.G. Kulkarni, for the Respondent

Final Decision : Dismissed

Judgement

D.D. Sinha, J.—Rule made returnable forthwith by consent of the parties.

2. The Counsel for the review petitioner has brought to the notice of this Court that in the instant case by impugned order dated 21-8-2006 the Board was directed to show the paper concerned to the non-applicant including the model answers within a period of one week from the date of passing of the impugned order if the non-applicant/petitioner approached the applicant/respondent Board. It is further contended that in the impugned order the Division Bench has also observed that if the applicant after verifying the papers feels that cause of action survives, in that case, liberty was given to the applicant to approach appropriate forum.

3. Mr. Patil, learned Counsel for review petitioner, has contended that the above referred direction given by this Court in the impugned order being inconsistent with the law laid down by the Apex Court cannot be sustained in law and, therefore, order impugned may be quashed and set aside. In order to substantiate the contention, reliance is placed on the decision of the Apex Court

in the case of Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, as well as decision of the Full Bench of this Court in the case of Tejas Dattaguru Pendurkar Vs. Maharashtra State Board of Secondary and Higher Secondary Education, Kolhapur Divisional Board, as well as decision of this Court dated 11-9-2006 rendered in Writ Petition No. 3430/06.

4. Mr. Kulkarni, learned Counsel for non-applicant, has contended that there is no quarrel with the proposition laid down by the Apex Court and this Court in the above referred decisions. However, he contended that in the instant case, the valuer has to give marks to the answer in the answer-book on the basis of the model answers and, therefore, if the valuation is not done correctly as per the model answers, in that event, the student will be entitled to have an inspection of the answer paper and if it is found that the valuation is not correctly done as per the model answers, in that event such student will also be entitled to canvass his grievance before the appropriate forum. It is, therefore, contended that the order impugned is sustainable in law.

5. We have considered the rival contentions canvassed by the respective Counsel. Perused the decisions relied on and cited by the review petitioner.

6. The regulations which are applicable in the instant matter are the Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 and we are concerned with Sub-clause (3) of Regulation 104 which read thus:

(3) No candidate shall claim, or be entitled to revaluation of his answers or disclosure or inspection of the answer-books or other documents as these are treated by the Divisional Board as most confidential.

The Apex Court interpreted clause 3 in the case of Maharashtra State Board of Secondary and Higher Secondary Education and another (cited supra) and in para 20 has observed thus:

...In our opinion, this interpretation of the concluding words of Clause (3) is incorrect. What is laid down therein is that the answer books and other documents are to be treated by the Divisional Boards as most confidential. In other words, this clause of the regulation contains a mandate to the Divisional Boards to treat the answer books and documents as confidential and lays down that no candidate shall be entitled to claim disclosure or inspection of the said confidential books and documents. We are also of the opinion that the High Court was in error in invoking the "doctrine of implied power and obligation" for the purpose of holding that because the right of verification has been conferred by Clause (1) of Regn. 104, there is an implied power in the examinees to demand disclosure and inspection and a corresponding implied obligation on the part of the Board to accede to such a demand. There is no scope at all for invoking any such implied power or imputing to the regulation-making authority an intention to confer such power by implication when there is an express provision contained in the very same regulation Clause (3) which clearly manifests the contrary

intention and states in categorical terms that there shall be no claim or entitlement for disclosure or inspection of the answer books.

The interpretation arrived at by the Apex Court of the Clause (3) of the Regulation makes it implicitly clear that the student is not entitled for disclosure or inspection of the answer-books. It is, therefore, evident that the direction given by us in the impugned order dated 21-8-2006 to the Board to show the answer-paper to the petitioner is undoubtedly inconsistent with the law laid down by the Apex Court and, therefore, cannot be sustained in law.

7. Similarly, the Full Bench of this Court in case of Tejas Dattaguru Pendurkar (cited supra) in para 18 has observed thus:

...In any case, exception cannot be made by the Court howsoever gross is the case and give directions for "revaluation" in the face of Regulation 104 and the interpretation made by the Supreme Court in that behalf.

This Court on the basis of the above-referred observations of the Full Bench of this Court dismissed the Writ Petition No. 3430/06 vide order dated 11-9-2006. Both these judgments rendered by this Court though pertain to the aspect of revaluation, however, have a positive bearing on the issue in question since it pertains to one of the categories mentioned in Clause (3) of Regulation No. 104. It is, therefore, evident, that the candidate is neither entitled to revaluation of his answers nor disclosure or inspection of answer-book as well as other documents in view of the law laid down by the Apex Court and this Court.

8. For the reasons stated hereinabove, the review application is allowed and the impugned order dated 21-8-2006 is hereby recalled. The Writ Petition No. 3928/06 stands dismissed. No order as to costs.