

(1987) 02 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 2537 of 1986

Mandavkar Narendra Shankar and Others

APPELLANT

Vs

The Maharashtra State Board of Secondary and Higher
Secondary Education and Others

RESPONDENT

Date of Decision : 25-02-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 182, 185, 186, 187, 238
Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 — Section 34(2)
Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 — Regulation 28, 29, 36(1), 41, 43(2)

Citation : AIR 1988 Bom 234 : (1987) 3 BomCR 663 : (1987) MhLj 294

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : M.R. Sathe, D.H. Mehta, N. Raja and K. Narayan, for the Appellant; C.M. Korde, instructed by Little and Co., A.R. Shinde and B.E. Patil, for the Respondent

Final Decision : Allowed

Judgement

1. Article 226 of the Constitution is invoked by 30 students and the Headmaster of Y.B. Chavan High School of Bhandup (West) to get a mandate against respondent No. 1 to declare the result of the student petitioners, who being repeaters were permitted under a Court direction to appear for Oct. 1986 S.S.C. examination.

2. The Y.B. Chavan High School is a recognised educational institution for the purposes of sending up candidates for examinations conducted by the first respondent, which is a Board constituted under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 (Act). The 31st petitioner is the Headmaster of that School. The student-petitioners had appeared for the S.S.C. examination held by the Board in Mar. 1986. Having failed at that examination,

they had to take a repeat examination. Under directions given by the Board, the School had to receive the application forms together with the prescribed fees by 21-7-1986. There was an enabling clause in the scheme to permit receipt of delayed applications, but even for this the last date was 31-7-1986. In about Sept. 1986, the petitioner Headmaster made a request to the Board requesting it to accept the application forms together with the fees of the student-petitioners for the ensuing Oct. 1986 examination. His plea was that these applications and fees had been received before 31-7-1986, that these had been handed over to the third respondent who was working in the School as a Clerk, that everyone including himself were under the impression that the third respondent had delivered the applications and the money collected to the office of the Board, that in fact respondent No. 3 had induced such a belief in the author of the communication and that it later came to the knowledge of the School authorities that the third respondent had misappropriated the amount and had not delivered the applications to the Board's office. The Headmaster pleaded that the School, and certainly the student-petitioners, were not at fault for what had taken place and having regard to the extraordinary circumstances, the Board should condone the delay, accept the applications and fees and permit the students to appear for the ensuing examination. One of the sources tapped by the Headmaster petitioner to persuade the Board to accept his request, was, the Minister of State (Education) in the State Government. The Minister was good enough to forward the petition of the students for condonation of delay with a recommendation that the matter be treated as a special case and the applications be accepted. The Board found itself at a disability to accede to the request made and that led to the institution of this petition on 3-10-1986. Jahagirdar J. granted interim relief in that the students, were permitted to appear for the examination pending the disposal of the petition. In pursuance of that relief, the students have appeared at the examination. The results of the other candidates appearing at the examination have been declared, but those of the petitioner-students withheld.

3. Petitioners contend that they were not at fault for what had happened. The students had submitted the applications along with the requisite fees on or before the stipulated date. Petitioner No. 31 was on leave from 29th of July 1986 to 31st of July 1986 -- both days inclusive. The applications and fees received from the students had been made over to the third respondent for delivery to the office of the Board. There was no reason for the Headmaster to suspect that the third respondent would not carry out the errand entrusted to him. Upon receipt of the Board's circular to verify a provisional list of those permitted to appear for the forthcoming examination, the Headmaster had deputed a Peon of the School to carry out this verification. That Peon was prohibited from carrying out the task assigned to him by the respondent No. 3 on the false assurance that he would be attending to the said task. It later transpired that respondent No. 3 had misappropriated the fees paid by the students and had not delivered the applications to the Board's office. To prevent this misappropriation from coming to the knowledge of the School, he had foiled the Peon from going to the Board's

office in response to the circular for verification. The petitioners should not be penalised for no fault of theirs. Therefore the need for a writ to declare the results of the petitioning students.

4. The first respondent Board in its affidavit-in-reply does not admit the factual averments appearing in the petition. It points out that Regn. 46 of the Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 (Regulations) is very clear. Applications not received in compliance with this regulation cannot be accepted. The Board had no power to waive the requirements of Regn. 46. Treating the appearance at the examination by petitioner-students as valid and compelling a declaration of their results would create a bad precedent which would render Regn. 46 meaningless and adversely effect the administration of the Board. Once a loophole was created, others would come forth and in the name of being deserving of indulgence for no fault of theirs, the Board would be placed in an unenviable predicament.

5. Counsel for the petitioners and the Board have been heard at length. The relief that the petitioners seek, would have to be considered in the light of the Act and Regulations mentioned above, the common law and also the Contract Act. It may be made clear that the petition does not make a reference to the common law, the Contract Act or the Act aforementioned. Learned Counsel appearing for the Board has been fair enough to say that the omission of the petitioners to make such a specific reference should not preclude this Court from a consideration of the same. First, I will consider the question from the angle of the Contract Act. Can the School be considered an agent of the Board? For this purpose, my attention has been drawn to quite a number of Regulations. Mr. Korde has been fair enough to take me through many of these, which might seem to militate against the stand taken by him. The stand is that the School cannot be considered to be an agent of the Board. About the only provisions in the Regulations which support this contention of Mr. Korde, are those at Nos. 28 and 29. Regn. 28 lays down the procedure for recognition of institutions by Divisional Boards. A Secondary School desiring to be recognised for the purpose of admission to privileges of Divisional Board has to apply for recognition and the application has to comply with the requirements set out in the said Regulation. Regn. 29 deals with Schools eligible to send up candidates for examinations. Clause (1) of this Regulation lays down that a recognised Secondary School shall be eligible to send up candidates for the final Examination for which such recognition has been granted to it by the Board. Mr. Korde places special reliance upon Clause (5) (ii) of Regn. 29 which reads thus : --

"If the registration fee as required under Sub-clause (i) above, is not paid by the Schools by the prescribed date, the applications of candidates for Secondary School Certificate Examination shall not be accepted by the Divisional Boards."

Sub-clause(i) to which a reference is made in the above clause deals with the liability of Secondary Schools recognised by the Boards, to pay registration fee as per item 12 of Regn. 47, every year not later than the 10th Aug. of each year.

But this is a liability cast upon the School -- once it is recognised and once the recognition is given by the Board, it is in the position of a recognised institution. Significantly, all the other clauses establish the relationship of a principal and agent as between the Board and the School respectively. Regn. 36(1) which deals with centres and dates of examination lays it down that details in regard to these are to be intimated by the Board to the heads of all Secondary Schools. This means that even in regard to basic matters, the students do not deal at arms length with the Board. It is always through the medium of the school. Regn. 41 lays down the eligibility of regular candidates for appearing at the Secondary School Certificate Examination. Heads of Secondary Schools have been obligated under this Regulation to do certain things. Sub-clause (3) of Regn. 41 requires candidates attending the final standard of a Secondary School desiring to appear at a Board examination, to make a proper application through the School. Making an application would not ipso facto permit the candidate to the requisite privilege sought by him. His application has to bear certain certificates and these can be accorded by the head of the Secondary School. Regn. 43(2) which is more apposite to the instant case inasmuch as we are dealing with repeaters runs thus : --

"An ex-student shall be entitled to receive a certificate with regard to his eligibility for admission to the examination and to have his application for admission thereto forwarded by the head of the secondary school...."

A part of Regn. 46 has been pressed by Mr. Korde to negative the contention of the School being an agent of the Divisional Board. This is to be found at Clause (5) which recites that the head of a Secondary School may refuse forward to the Board an application received from a candidate. But the power of refusal can be exercised only in respect of applications which are not complete in every respect. From this, it would appear that even where the applications are otherwise complete, a duty is cast upon the Schools to carry out this scrutiny. The last part of Regn. 47 casts upon the Headmaster of Secondary School the duty to pass a receipt for the fees paid to the candidate paying. This duty the head performs, to quote the said part "on behalf of the Divisional Board." After the results are declared, there comes the question of supplying mark-sheets. Regn. 46 lays it down that the mark-sheets shall be supplied to the candidates through the head of the Secondary School." Regn. 56 enables a candidate to apply for verification of marks. But the application has to be made by the candidate "through the head of the Secondary School." Regn. 59 deals with award of certificates. Candidates who have passed the examination conducted by the Board are entitled to get certificates so testifying. These are required to be issued to them "through the head of the Secondary School presenting the candidates for the examination." In case a copy of the certificate is required, Regn. 61 requires the applicant to apply "through the head of the Secondary School" which had presented the candidate for the examination. From the many provisions considered above, it is clear that the School occupies the position of an agent vis-a-vis the principal. That at least is certainly so, in so far as the receipt of applications for appearing at the

examination is concerned. Section 182 of the Contract Act defines an "agent" as : --

"a person employed to do any act for another, or to represent another in dealing with third persons. The person for whom such act is done, or who is so represented, is called the "principal"."

Sections 185 and 186 of the said Act are also of importance to understand the position. The first section provides that no consideration is necessary to create an agency. Section 186 which deals with the extent of authority conferred upon an agent, lays it down, that this may be either expressed or implied. Section 187 deals with what is expressed as contradistinguished from what is implied. An authority is said to be expressed when it is given by words spoken or written. An implied authority on the other hand is one which can be inferred from the circumstances of the case. The Regulations under which the Board functions is expressed authority for the position occupied by a "recognised School vis-a-vis the Board in relation to students preparing for and desirous of appearing, at the examinations conducted by the said Board. Having regard to the aforementioned provisions, I would say that there is expressed authority showing the Schools recognised by the Board to be the latter's agents for the purposes of receipt and transmission of applications and fees of students desirous of appearing at Board Examinations. What happens when an agent misconducts? It is Section 238 of the Contract Act which is attracted. That section reads thus : --

"Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals."

Here, the School, though recognised, had to function through employees. Petitioner No. 31 was the Headmaster and the primary responsibility lay upon him. But in the very nature of things, he could not act by himself to discharge all the duties cast upon him. Therefore, the paraphernalia of Clerks, Peons etc. Respondent No. 3 was working as a Clerk. The Board does not admit the factual account given by the petitioners. Apart from the fact that this account is on affidavit, and therefore, entitled to be relied upon, there are supporting documents. Respondent No. 3 himself addressed certain communications to the Headmaster-petitioner, admitting responsibility for misappropriating the fees and not lodging the applications of the students. The admissions given by respondent No. 3 are against his own interest and show him to be a criminal. Therefore, it cannot be believed that a story has been cooked up by the students and/or the Headmaster to get out of a situation of their own creation. Respondent No. 3 being one of the mediums through whom the Board dealt with the petitioner students, his misdeeds will be deemed to be the misdeeds of the Board u/s 238 of the Contract Act.

6. The Minister of State's letter at Ex. D can be construed as a direction of the State Government u/s 34 of the Act. Sub-section (2) of this section reads thus :

--

"The State Government shall have also the right to address the State Board or any Divisional Board with reference to anything it has conducted or done, or is conducting or "doing, or intends to conduct or do, and to communicate to the Board concerned its views in the matter."

Mr. Korde submits that the Minister's letter at Ex. D cannot be said to be a direction under the aforementioned provision. Firstly, it is worded as a recommendation and even that is not a label easy to fit, because the Minister's letter called upon the Board to "see whether it is possible to accept the applications". But the letter has to be read as a whole. The Minister opined that 30 students were likely to suffer because of the negligence of the Clerk of the School. She further opined that the matter could be treated as a special case. The trend of the letter is clear viz. that the Board should accept the applications though received beyond time. Does the language or anything else in the latter exclude the application of Section 34(2)? As I read Section 34(2), the power given to the State Government thereunder is of the widest amplitude. The State Government has the right to address the Board with reference to anything (i) which is conducted or done, (ii) or is conducting or doing and (iii) or intends to conduct or do. Here, the Board was going to conduct an examination in Oct. 1986 and was not prepared to accept the applications of the student-petitioners. The inclination of the Minister is clear from Ex. D. It may be argued that the Minister was calling upon the Board to do something which would have contravened Regn. 46. Whether such a contravention would have occurred will be examined separately. Tentatively, I do not see any limitations upon the power of the State Government to give directions, assuming such would be in conflict with Regulations. This is only a tentative opinion and made for the limited purpose of meeting the argument of Mr. Korde that compelling the Board to accept application forms not submitted in accordance with the Regn. 46, would have led to a contravention of that Regulation. The power to ignore the Regulations cannot of course be exercised so as to nullify the obligations placed upon the Board under the Act. But if the Regulations came in the way of the Board to discharge its primary task, which task is to be spelt out from a reading of the entire Act, then it would be open to the State Government to issue directions u/s 34(2). The preamble to the Act gives in a nutshell the primary task of the Board. That task was "regulating certain matters pertaining to secondary and higher secondary education in the State of Maharashtra." That the Board was not asked to communicate its views upon the request contained in the letter of the Minister, does not mean that Section 34(2) is excluded. There was after all the request in the letter that if considered necessary, the Chairman of the Board could discuss the matter personally with the Minister. I, therefore, hold that the Minister's direction contained in Ex. D bound the Board to accept the applications and the fees.

7. The third head under which the petitioners' claim can be considered is the Common Law. Here, it is established that the students as also the Headmaster, were not at fault for the non-receipt of the applications and fees submitted in time. Should they be deprived of the right to appear at examination because of the crime committed by the respondent No. 3. I really see no reason why this calamity should be allowed to occur. If there be no statutory power or prohibition, the Courts can at least take recourse to the principles of justice, equity and good conscience to aid a deserving party. I agree that there is a great deal of substance in the Board's plea about the adverse effects of a bad precedent. The reasons given in the Board's affidavit-in-reply are not the usual quibbles which statutory bodies advance as an excuse for inaction. Hard cases should not be a reason for deviating from the law. Chinks in the statute should not be allowed to occur, lest the opportunity be used to so widen the gap as to enable the passage of a coach and four. Nonetheless if there be no statutory power, the Common Law should come to the aid of those placed in an unfortunate situation for no fault of theirs. After all, whoever else may be the principal of respondent No. 3, petitioners Nos. 1 to 30 did not occupy that position.

8. Last, there is the pleaded limitation of Regn. 46. It is true that this regulation lays down a definite date within which the regular and late fee applications should reach the office of the Board. The two provisos there to show what is to happen when the student-applicant and the school are at fault. It would appear that the framers of the Regulations did not foresee cases like the present occurring. What is not permitted by the Regulations may be deemed to be prohibited. I see no escape for the students, were the matter to be governed by Regn. 46 only. Fortunately for them, there are other grounds on which the petition can be allowed.

9. Before parting with this case, I place on record my appreciation for the assistance rendered by Mr. Korde. His in-depth study and moderation have been of great value in appraising the many different aspects that this case has thrown up. To conclude, the Board has to and is hereby directed to declare within a week from today the results of petitioners 1 to 30. Rule thus made absolute with parties being left to bear their own costs.