

(2011) 12 BOM CK 0118

In the Bombay High Court

Case No : Writ Petition No. 1499 of 2011

Manrajsingh Hardevsingh Sandhu

APPELLANT

Vs

Maharashtra State Board of Secondary and Higher Secondary
Education and Maharashtra University of Health Sciences,
Nasik

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Advocates Act, 1961 — Section 35, 35(3)
Constitution of India, 1950 — Article 226, 227
Representation of the People Act, 1951 — Section 116A

Citation : (2012) 2 ALLMR 93

Hon'ble Judges : P.D. Kode, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : S.P. Bhandarkar, for the Appellant; Anand Parchure, Advocate for respondent no. 1 and Mr. J.B. Jaiswal Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Kode, J.—Heard.

2. Rule, made returnable forthwith. Mr. Anand Parchure and Mr. J.B. Jaiswal, learned counsel respectively waive service for respondent No. 1 and 3. Considering the main relief prayed, service upon respondent No. 2 dispensed with.

3. By the present Petition under Articles 226 and 227 of the Constitution of India, the petitioner student has prayed for

a) quashing and setting aside order of respondent No. 1 Board dated 14th March, 2011 cancelling Higher Secondary Certificate Examination (February/March 2008) given by him and so also provisional result of the same declared on 7th July, 2008 and further debarring him for once appearing at said examination.

b) directing respondent No. 1 for declaring himself having successfully passed

said Examination with 63% marks i.e. as per the provisional declaration made by board on 7th July, 2008.

c) saddling cost of Rs. 5 lacs upon respondent No. 1 for having acted in defiance of order passed on 22.2.2011 disposing Writ Petition No. 2474/2010 earlier preferred by petitioner and having indulged in the acts of trying to destroy his career prospect.

4. Mr. Bhandarkar, learned Counsel for the petitioner, urged that the petitioner is forced to prefer present petition by way of fourth round of litigation due to respondent No. 1 vindictively having continued to maintain such erroneous, illegal, arbitrary decisions from time to time arrived by them since 2008 in spite of the petitioner on each of such occasion, having challenged decision then arrived and thereon the same being quashed and set aside by the Court and having remanded matter to the respondent No. 1 with appropriate directions.

5. With regard to the events occurred leading to filing of the present Petition, Mr. Bhandarkar urged that:

a) the petitioner a student of Hislop College, Nagpur appeared for 20072008 HSC Examination held in March, 2008 from Centre No. 306 at L.A.D. College with allotted Seat No. N OO8633. The last paper for subject of Psychology out of six papers for different subjects for the said examination was scheduled on 10th March, 2008 in between 3:00 p.m. to 6:00 p.m.. During the said paper, room No. 204 in which the petitioner was having seat was visited on two occasions by Flying Squad i.e. firstly at 4.00 noon and secondly at 4.20 noons.

b) according to respondent No. 1, while giving said paper the petitioner indulging unfair means, was found carrying nine chits while solving said Psychology paper. The said nine chits and so also his original answer sheet were seized and he was given fresh answer sheet at about 4:30 p.m. for solving said paper.

c) The Enquiry Officer thereafter appointed, after duly considering reply given by the petitioner to show cause notice issued in light of the relevant facets of the event, came to the conclusion that the petitioner was not guilty of using unfair means in Examination and exonerated him.

d) however, the Standing Committee of respondent No. 1 without taking into consideration such report given by Enquiry Officer, took different view and cancelled examination of the petitioner and debarred him for once appearing for said examination. The petitioner challenged the same by filing Writ Petition No. 2346 of 2008. By the provisional result declared as per the interim direction given in the said Petition, the petitioner was declared of having passed said examination with 63% marks. The said petition was, thereafter, disposed of on 14.10.2008 by quashing and setting aside order impugned therein with a direction to respondent No. 1 Board for conducting fresh inquiry within four weeks by examining invigilator with liberty to the petitioner to cross examine her.

e) accordingly respondent No. 1 conducted fresh enquiry and during the same on

18.11.2008 statements of four persons were recorded i.e. of

- (i) Mr. H.N. Gillurkar (Member of the Flying Squad),
- (ii) Mr. R.P. Shelokar (Additional Center in charge);
- (iii) Ms. Apurva Pathak (Invigilator), and
- (iv) Ms. Mangla Baitule (Center in charge).

Even after said enquiry, the respondent No. 1 passed similar erroneous order cancelling examination of the petitioner and debarring him once for appearing for examination.

f) the petitioner challenged the said order by filing Writ Petition No. 1164/2009. After hearing both sides, the same was disposed of by order dated 23.3.2010 by again setting aside said order passed by respondent No. 1 and remanding the matter with a direction to the petitioner to appear before the Board on 1.4.2010 and to the board for taking fresh decision within four weeks thereafter after giving due opportunity to the petitioner to cross-examine the witnesses examined during the enquiry. The petitioner was also then given liberty to apply the board for cross-examining the witnesses through Advocate, with further direction to the board to consider such a request if made, on its own merits. Accordingly the petitioner appeared and cross examined the witnesses through his Advocate. Even thereafter once again the similar order cancelling the examination of the petitioner and debarring him once appearing for examination was passed by the respondent No. 1.

g) the petitioner challenged the said order by filing Writ Petition No. 2474 of 2010. The respondent No. 1, during the hearing, tried to justify that the decision was arrived after taking into consideration the evidence of the witnesses examined. However, it was alternatively submitted that in event of the Court being of the view that the respondent No. 1 needs to reconsider the evidence of witnesses and take fresh decision; the respondent No. 1 was willing to do so.

h) having regard to such a willingness shown by the respondent No. 1, the said writ petition was disposed of in terms of the order dated 22.2.2011 of which the relevant part runs as under:

10. In the backdrop of the above referred facts, the limited issue which is required to be reconsidered by the board is in respect of the evidence of the above referred witnesses examined by the Board in order to prove the charge of use of unfair means by the petitioner at the time of examination. Since the Board has already agreed to reconsider the evidence of these witnesses in totality and shall take a fresh decision, it will not be proper for us to express our opinion in respect of the quality of evidence, contradictions, if any in the evidence of these witnesses etc. at this stage and we leave it to the Board to consider these aspects. Since this is a third round of litigation, we want to express that the Board shall carefully consider the evidence of all these witnesses and should take

a fresh decision after due consideration of the evidence of these witnesses.

11. For the reasons stated here in above, the impugned order dated 17/5/2010 is hereby quashed and set aside. The Board shall reconsider the evidence of the all the witnesses examined by the Board, as referred here in above, carefully and take a fresh decision based on the said evidence.

(All emphasis supplied by us)

6. Mr. Bhandarkar further urged that the respondent No. 1 utterly failed to comply said direction given and once again recording erroneous, illegal and arbitrary reasons passed in order dated 14th March, 2011 amongst other reiterating earlier decision that the evidence adduced had established that the petitioner while solving the paper of Psychology had written answer sheet by keeping the chits/papers related to said subject i.e. the chits which were found with him and thereby was guilty of unfair means. The respondent No. 1 also cancelled examination of the petitioner as well as result provisionally declared earlier and further debarred him for once appearing at said examination, forcing him to initiate present fourth round of litigation.

7. He urged that the respondent No. 1 failed to assess the evidence/material surfaced during the enquiry by applying correct standard of proof i.e. regarding the crucial aspect whether nine chits were found with the petitioner as alleged. He urged that said enquiry was consequently involving question of imposing punishment in event of petitioner being found guilty using unfair means in said examination. Hence, the said proceedings though of quasi judicial nature were on par with criminal prosecution and were requiring standard of proof as required in criminal prosecution i.e. the fact warranting imposition of punishment being required to be established beyond pale of doubt and not merely on preponderance of probability i.e. by a standard of proof as required for proceeding of civil nature.

8. He further urged that it was necessary for respondent No. 1 to supply the petitioner all the material which they intended to rely against him in such type of proceedings. By drawing attention to reply dated 27th August, 2009 given by respondent No. 1 to the application dated 30th April, 2009 (erroneously stated in the said reply as dated 29th July, 2009) made by the petitioner to the information officer of respondent No. 1 under Right to Information Act, for furnishing copies of the documents described at subheads (a) to (n) in his said letter, the learned counsel urged that refusal on part of respondent No. 1 to give the same by pointing provisions of Section 8(3)(ch)(tra) on the count of Writ Petition No. 1164 of 2009 preferred by the petitioner being then pending clearly denotes that the petitioner was deprived of said material. He further urged that glance at said letter reveals that petitioner had sought information about the matters/material which was ultimately utilized against him in the enquiry conducted. He urged that the same has resulted in gross violation of the principles of natural justice and on the said count alone the order impugned

deserves to be quashed and set aside.

9. He urged that respondent No. 1 failed to appreciate the material surfaced in the enquiry in proper perspective regarding the place at which nine chits were found/seized. He urged that the evidence/material relied by respondent No. 1 is incapable of reaching to the finding of the same being found with the petitioner and driving to ultimate conclusion of the guilt of the petitioner for unfair means, as arrived by respondent No. 1. He urged that such conclusion is apparent due to irreconcilable variance occurring within the evidence of the witnesses regarding the place from which the said chits were seized.

10. In said context he pointed that Mr. Gillurkar, member of flying squad, during the evidence claimed that nine chits were recovered from the pocket of the petitioner, while Mr. Shelokar Additional Centre Incharge claimed that the same were found within the paper of the petitioner, while one more witness claimed that the same were found lying on the ground nearby the seat of the petitioner i.e. as pointed by the petitioner in the representation / explanation dated 19.12.08. He further pointed that the evidence of the fourth witnesses examined i.e. Ms. Baitule, centre incharge reveals that neither signatures of the witnesses were taken on form No. 31 nor she had recorded her remarks on the same nor signature of the petitioner was taken on the nine chits allegedly seized from him. He urged that in view of the same, submission canvassed by learned counsel for respondent No. 1 that form No. 31 is bearing the signatures of witnesses gives reason to believe that same was fabricated later on. He urged that the same is fortified from the conduct of respondent No. 1 of not furnishing copy of same to the petitioner in spite of demand made by him vide letter dated 30th April, 2009 under the Right to Information Act.

11. Learned Counsel urged that apart from the said irreconcilable variance occurring regarding the precise place at which the paperchits were allegedly found with the petitioner, considering the evidence/statement of each of them in light of the answers given by them in the cross-examination, it is difficult to accept that the evidence adduced is cogent and convincing. He urged that with such miserable character of material/evidence adduced, it cannot be said that fact of seizure of nine chits from the petitioner was duly established. He urged that the flying squad during the first visit having found nothing is also a circumstance to be taken into consideration while appreciating the said evidence and so also supporting contention of the petitioner that vindictively he is made scape goat.

12. Mr. Bhandarkar thus urged that considering the erroneous observations made and the illegal, arbitrary conclusions reached in the said order upon such evidence/material on the record, the same cannot be sustained. He further urged that in spite of such a position, respondent No. 1 having continued with the attitude of unnecessarily cancelling the examination is indicative of the relevant order being not passed upon the merits of the matter. He thus prayed that unsustainable order passed by respondent No. 1 be quashed and set aside by

allowing the Petition. He further urged that having due regard to the attitude of the respondent No. 1 of maintaining erroneous decisions vindictively also warrants awarding suitable compensation to the petitioner as prayed. Learned Counsel also placed reliance upon certain decisions in support of the submission canvassed to which reference is made at appropriate place in the further part of this judgment.

13. Mr. Parchure, learned Counsel for respondent No. 1, submitted that there is no merit in the Petition preferred. He urged that as per the direction given in the Writ Petition No. 2474/2010 on 22.2.2011, the respondent No. 1 has carefully considered the entire evidence adduced and on the basis of the same has correctly arrived at the conclusion that nine chits pertaining to printed material about psychology paper were found with the petitioner. Thus the involvement of the petitioner in the malpractices being squarely established from the same, respondent No. 1 has rightly come to the conclusion as stated into the order impugned.

14. Mr. Parchure further urged that the submissions canvassed on behalf of the petitioner by pointing out answers obtained during the cross examination that Form No. 31 was not containing signature of witnesses and student or that the said form is subsequently fabricated is devoid of merit. He urged that the said fact can be ascertained only by inspecting said form within the original record and not on the basis of oral evidence i.e. answer obtained from the witnesses during the cross examination. He urged that fact that the same is bearing not only the signature of the student/petitioner but his say repels the submission of the same being fabricated later on. He urged that the material adduced has been carefully considered in the light of the stand taken by the petitioner during his reply. He urged that the fact of nine chits being found in the pant of the petitioner is duly established from the evidence of member of the flying squad Mr. Gillurkar. He urged that the criticism canvassed that there is a variance in the statement of Mr. Gillurkar and additional centre incharge Mr. Shelokar does not stand to the reason after considering the evidence of each of them in the light of the answers given by them during the crossexamination. He urged that the said answers in terms reveal that said witness had not personally seized or seen the seizure of the said chits from the petitioner. It is urged that hence merely because he had stated as pointed out would not affect the claim staked by Mr. Gillurkar who had actually seized the chits from the pocket of the petitioner. He urged that the same is the case about the evidence of the other witnesses other than Mr. Gillurkar.

15. He further urged that truly speaking the burden upon the respondent No. 1 is not rigorous as tried to be canvassed by the petitioner as the said inquiry is purely of quasi civil nature. He expressed serious doubt regarding the proposition canvassed that since inquiry was also contemplating imposition of punishment in event of student being found to have indulged in unfair means has an effect of character of inquiry being on par with criminal prosecution. He urged that even

assuming that the same being so, still the material surfaced during enquiry was leading to sole inference that nine chits were seized from pocket of the petitioner and identical matter as contained in one of them was found in the seized paper (answer sheet) of the petitioner. He urged that thus the same could not have led to any other order than passed on 14.3.2011. He also relied upon certain decisions in support of submission canvassed by him.

16. We have carefully perused the record and particularly the Form No. 31 from original record of the inquiry called and given thoughtful considerations to the submission advanced for determining the sole question involved in this Petition whether respondent No. 1 has rightly arrived at fresh decision dated 14th March, 2011 after properly complying the direction given in Writ Petition No. 2474 / 2010 of reconsidering the evidence / material surfaced in enquiry conducted.

17. Firstly considering the grievance of petitioner having not received copies of material relied against him in enquiry i.e. the material sought by him under Right to Information Act, due to respondent Board having refused to give the same on the counts stated in the reply dated 27.8.2009; we find it difficult to find any substance in the said grievance now made. The same is obvious as said refusal was made way back in month of August, 2009 on the count of Writ Petition No. 1164 / 2009 preferred by the petitioner then being pending. The matters stated hereinabove clearly reveals that the said Writ Petition was disposed by the Court by order dated 2.4.2010. The petitioner has not pointed that any directions regarding said grievance was then sought by him and given in said order disposing the said Petition.

18. Further more in terms of said order in the enquiry conducted thereafter, petitioner had participated and he was duly permitted by respondent No. 1 to cross examine the witnesses through his Advocate. Without enlisting the questions then put on behalf of the petitioner to the witnesses during said cross examination, it can be safely said that petitioner had then cross examined witnesses regarding all the relevant aspect i.e. about the said material of which the copies were sought by him. Thus, taking into account the said questions put in the cross examination about the same and answers received for the same, it is difficult to accept that petitioner was not aware of the nature and the aspects of the said material relied against him by respondent No. 1. Having regard to the same, it is further difficult to accept that during the enquiry the petitioner has not received due opportunity to test the relevant aspect.

19. Additionally, the order dated 17th May, 2010 passed by respondent No. 1, after said enquiry, was again challenged by the petitioner by filing W.P. No. 2474/2010 which was disposed by order dated 22.2.2011. The copy of the said order produced along with the Petition also does not reveal that even then petitioner had made any grievance regarding non receipt of copies of the said material. Furthermore petitioner has annexed the statements of relevant witnesses examined during said enquiry including the questions asked and answers received during the crossexamination of said witnesses effected by the

petitioner through his Advocate. The same makes it extremely difficult to accept that during enquiry, the petitioner was not given and/or had not received due opportunity to challenge the material relied against him. Thus, the grievance presently made is totally uncalled for deserving no consideration.

20. In the same context, the perusal of decision in the case of Sachin Agrawal vrs State of U.P. reported in AIR 1999 Allahabad Page 157 and particularly the observations made in paragraph 11, 13 and 14 upon which reliance was placed for supporting said grievance made on behalf of petitioner, reveals that in the said case the petitioner student was not caught red handed at the examination while using unfair means but later on the matter was enquired after receipt of complaints regarding mass copying, the report of subcommittee who had inquired the matter was not furnished to him, he was also not given an opportunity to adduce evidence oral or documentary during the enquiry before passing an order of withholding his result. In such facts and circumstances of the said case due opportunity to defend being not received by the student being established, the order was quashed and set aside in the said case. In the instance case, no such facts situation being established and as discussed earlier the grievance presently made being found totally uncalled for the said decision cannot be said to be of any useful assistance to the petitioner. Needless to add, in the present case, after taking into account the subsequent event occurred after refusal to furnish the information in response to application made by petitioner under the Right To Information Act, makes it difficult to perceive of there being violation of much a less gross violation of principles of natural justice as canvassed.

21. The careful perusal of the decisions of the Hon''ble Apex Court in the cases of (1) H.V. Panchaksharappa Vs. K.G. Eshwar, ; (2) An Advocate Vs. Bar Council of India and Another, and (3) All India Anna Dravida Munnetra Kazhagam Vs. L.K. Tripathi and Others, relied by the learned counsel for the petitioner for supporting his submissions that standard of proof required for an enquiry of a nature as made in the present case being on par with that of criminal prosecution reveals that out of them first two cases were regarding the misconduct on part of the Advocate complained while third one was regarding the contempt of court. It further reveals that after having due regard to nature of the charges levelled, severity of the punishment prescribed for the same, the inquiry contemplated for such charges levelled in the said cases inquiry contemplated for the same was considered to be that of quasi criminal nature warranting a proof beyond reasonable doubt.

22. The reasoning behind the same is abundantly clear from the observations made in paragraph No. 3 of the second case of the Re.vs. Advocate (supra) wherein while observing regarding the proceedings u/s 35 of the Advocate Act read with relevant rules, the Hon''ble Apex Court has observed :

(i) essentially the proceedings are quasi criminal in character inasmuch as a Member of the profession can be visited with penal consequences which affect

his right to practise the profession as also his honour, u/s 35(3)(d) of the Act, the name of the Advocate found guilty of professional or other misconduct can be removed from the State Roll of Advocates. This extreme penalty is equivalent of death penalty which is in vogue in criminal jurisprudence. The Advocate on whom the penalty of his name being removed from the roll of Advocates is imposed would be deprived of practising the profession of his choice, would be robbed of his means of livelihood, would be stripped of the name and honour earned by him in the past and is liable to become a social outcast. A disciplinary proceeding by a statutory body of the Members of the profession which is statutorily empowered to impose a punishment including a punishment of such immense proportions is quasi criminal in character.

23. Similarly in the third case i.e. All India Anna Dravid Munnetra Kashagam vs. K. Tripathi and Company (supra), the Apex Court in paragraph No. 34 is observed to the effect:

34. We may now notice some judgments in which the Courts have considered the questions relating to burden of proof in contempt cases. In *Re Bramblevale Ltd.* (1969) 3 All ER 10621 Lord Denning observed:

A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence. Where there are two equally consistent possibilities open to the court, it is not right to hold that the offence is proved beyond reasonable doubt.

24. Now examining nature of inquiry made by respondent No. 1 in present case even in light of the ratio of the said decisions pointed also makes it difficult to accept the submission canvassed of the same being of quasi criminal nature as tried to be canvassed on behalf of the petitioner. The same is apparent as the Schedule of punishment (Item No. 10) Appendix "A" prescribing punishment for various unfair means indulged during the examination brought to our notice prescribes punishment for charges at Item No. 9 to the tune of cancellation of performance of entire examination and debarring for one more examination. Needless to add, same thus indicates that such a candidate is even not permanently barred from appearing at the examination. Having regard to the same even judging from the angle of severity of punishment prescribed, the same cannot be said to be of a nature, for which in the said referred cases for punishment having severe/drastring effect, as observed in the said cases, the inquiry in the said cases were considered to be of quasi criminal nature. Needless to add that no submission being canvassed on behalf of petitioner being the said charges were of an offence or for determination for commission of offences, no dilution about the same is warranted.

25. Having regard to the submissions advanced regarding difference in standard of proof in civil and criminal cases it appears proper to make the reference to observations made by learned Authors Woodroffe & Amirali in their treaty by name "Law of Evidence" 14th Edition, wherein on page 195 and 196 upon the relevant aspect the learned Authors have observed to the effect:

(l) Proof in Civil and Criminal cases. Certain provisions of the Law of Evidence are peculiar to Criminal trials, e.g., the provisions relating to confessions and character, and the character of the prosecutrix in rape case and others are peculiar to Civil cases, e.g., the provisions relating to admission character and estoppel but apart from these, the rules of evidence are the same in Civil and Criminal cases. But there is a strong and marked difference as to the effect of evidence in Civil and Criminal proceedings. The Court is not entitled to require from any party conclusive proof of any fact; it cannot require a standard of proof higher than that required by this Act. "The circumstances of the particular case" must determine whether a prudent man ought to act upon the supposition that the facts exist from which liability is to be inferred. What circumstances will amount to proof can never be a matter of general definition. But with regard to the proof required in Civil and Criminal proceedings there is this difference : that in the former a mere preponderance of probability is sufficient; and the benefit of every reasonable doubt need not necessarily go to the defendant but in the latter (owing to the serious consequences of an erroneous condemnation both to the accused and society) the persuasion of guilt must amount to `such a moral certainty as convinces the minds of the tribunal, as reasonable men, beyond all reasonable doubt. These principles apply also in regard to the proof necessary to set aside elections u/s 116A of the Representation of People Act, 1951. The test in weighing the evidence in such cases is similar to the one in criminal cases.

(m)...

(n) Test " Beyond" reasonable doubt. Strictly speaking, the test of legal proof is not the absence of reasonable doubt, though that is often a convenient way of expressing what is meant by `proof". The test is really the estimate which a prudent man makes of the probabilities, having regard to what must be his duty as a result of his estimate. In each case whether proof of the case for the prosecution or proof of the defence set up by the accused, it is the estimate of probabilities arrived at from this practical standpoint by a prudent man.

26. Similarly in the context of other aspects connected with the same, it will not be out of place to make a reference to the decision of the Apex Court in the case of Vadivelu Thevar Vs. The State of Madras, , wherein Hon"ble Apex Court while considering the question of Court insisting upon plurality of a witness in a murder case, in paragraph nos. 11 and 12 amongst other observed:

11. In view of...Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable

number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way- it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise when only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witnesses, which is the only reliable evidence in support of the prosecution.

27. In light of the aforesaid, we find it unnecessary to go into the controversy of the said inquiry being of quasi criminal nature and hence was warranting a proof on par with criminal prosecution, as considering the material surfaced during inquiry even applying such standard, we find it difficult to accept the submission canvassed that by applying such standard respondent No. 1 could not have arrived to the decision as arrived by them. Needless to add that after assessing said material surfaced upon the test given/explained by the learned author regarding standard of proof for criminal prosecution (in extract recited hereinabove) and plurality of witnesses being not required even in criminal prosecution for establishing a charge and reliability of witness being test for

accepting his evidence for establishing a fact, as observed by the Hon"ble Apex Court hereinabove, after considering the material surfaced in the inquiry, we find it difficult that the same would not have led to the decision about guilt of petitioner for using unfair means in the examination, as arrived by respondent No. 1 board.

28. We are of such a considered opinion as the evidence of member of the flying squad Shri Gillurkar in no uncertain terms reveals that nine paper chits were found in the pocket of the petitioner and the same were seized and handed over by him to incharge of the centre. Furthermore, considering each of the answer given by him to 26 questions put to him during the cross examination it is difficult to accept that any of them had an effect of shattering main claim staked that nine chits were found in the pocket of the petitioner. The fact of chits being found in the pocket of the petitioner being main "fact in issue" relevant to the purpose for which enquiry was held, his answer during the crossexamination that he had given the same to Shelokar along with the papers cannot be said to be affecting his evidence about the said core issue. The same is obvious as careful scrutiny of his statement does not reveal claim being of "himself" having handed over the said nine chits to the centre incharge. In view of the same and having due regard to the fact as revealed from the other material that ultimately the said nine chits and seized paper were given in the custody of the centre incharge, the said casual statement of chits being given to centre incharge cannot be said to be affecting his main claim of chits being found in the pocket of the petitioner.

29. Similarly inability of Shri Gillurkar to tell the clothes of student/petitioner on the count of the matter being of year 2008 or as to how many were the pockets to the pant worn by the petitioner, or the nature of pant or precisely to tell whether the papers were found in right or left pocket of pant or non mentioning of the time in the report or having not told Shri Shelokar that the same were seized from the pocket or inability to give the reason for having not mentioned details of said aspects in his report etc. also cannot be said to be affecting main core of his claim that nine chits were found in the pocket of the petitioner. Such a conclusion is obvious as he has candidly admitted during the cross examination of having been to the relevant room on two occasions and timing for the same. He has also specified the place at which the student was having a seat and the papers being found on the second occasion. He has duly answered regarding the type of copy papers being printed and the same being not handwritten papers and the same being printed with black ink and having counted the same and the same were found to be nine. Now considering the main aspect to which attention of such member of flying squad involved in seizure of "copy paper i.e. nine chits from the pocket of the petitioner" would have been focused, his inability to answer about the ancillary matters regarding type of clothes and few more i.e. matters stated hereinabove cannot be said to be affecting main core of his testimony. Such a conclusion is again apparent as the said matters can never be said to be instrinctly connected with the main fact i.e. precise place from which

the said nine chits were seized. The same reasoning will be equally applicable to other matters regarding which he was not able to give answer.

30. Furthermore, it is significant to note that during the cross-examination it has also surfaced that he has not received any harassment from the petitioner during the course of his service i.e. a reason for entertaining any animus ill will/ grudge against the petitioner. Needless to add hardly any reason for said witness having animus against petitioner or reason to falsely claim of papers being found in his pocket was suggested to Shri Gillurkar much less establishing the same by eliciting any answer during cross-examination in the said regard from him. Further more, considering the frankness with which Shri Gillurkar had given the answers also gives an impression of his evidence considered as a whole having ring of a truth. Thus, upon independent assessment of evidence of Gillurkar the same does not reveal any plausible reason for not accepting his main claim of chits being found in the pocket of the petitioner.

31. Apart from the aforesaid it will be necessary to state that the evidence of Shri Gillurkar is found duly corroborated and/or supported from the fact that the matters from one chit out of nine chits containing printed matter seized, were found written in the handwriting of petitioner adverbatam on page number 10 of the answer sheet seized from the petitioner i.e. with regard to the answer given for question No. 2B(3) of Psychology question paper for the examination. The fact of seized answer sheet of the petitioner containing adverbatam matter as printed on one of seized chits out of nine chits seized from the petitioner leads to no other inference than the same being used for writing the said matter in the answer sheet and consequently at the relevant time petitioner possessing the same. Thus, the fact of petitioner possessing the nine chits clearly appears to be all probable in facts and circumstances of the present case, than the same being not seized from him.

32. In the same context, it can be said that, as pointed hereinafter hardly any material had surfaced in the inquiry to the effect of nine chits were not found not with the petitioner but were found lying on the ground nearby his seat and were picked up. The petitioner during his written explanation dated 19.12.2008 had canvassed such an explanation. It is significant to note that in Form No. 31 perused by us that petitioner has recorded "copy was placed under the desk but I haven't seen it". Thus apparently there exists the contradiction in the stand taken by the petitioner regarding the place at which the said chits found i.e. lying on ground or placed under the desk. It is further significant to note that even taking into account said explanation given by him that the same were thrown on ground by some other student due to fright, is short of necessary details about the said student involved in any such incident occurred. It is difficult to accept that if the petitioner was aware about the fact of the same being thrown by some other student, he would be unable to give details or the clue regarding the same.

33. It is difficult to accept his said explanation without such a detail as the relevant event had occurred during the midst of the period for said paper i.e. at

about 4 to 4:30 out of total period for said paper from 3 to 6 pm. Thus even assuming that any such event had occurred then taking into account the phase at which the same could be said to have occurred it is difficult to expect such a person throwing the said printed chits could have been anybody else other than the student having a seat within the vicinity of the seat of the petitioner. Having due regard to the same the nonability of the petitioner to throw the light upon the same takes away all the sanctity of the explanation tried to canvass by him. Similarly the phase at which such explanation has forthcome also suggests the same being an afterthought explanation rather than same being genuine/true explanation. Needless to say, thus the same will not deserve any credence.

34. Additionally, it can be added that no explanation had forthcome from the petitioner at any stage of an enquiry about the fact of the same material as found printed upon one of the chit was found written in the answer sheet seized from him. The inability of the petitioner to give a cogent explanation for said clinching aspect against him i.e. the same printed matter was found written in his hand for giving answer to said question No. 2B(3) leads to no other conclusion of all the said nine chits were found with him and one of them was used by him while giving answer to the question number 2B(3) during the said examination.

35. The learned counsel for the petitioner attempted to explain the phenomena by urging that even during the provisional declaration of result petitioner being found to have passed the same with 63% of marks and the said determination being obviously on the basis of the paper completed by him upon the fresh answer sheet given to him at 4:30 p.m. after seizure of earlier sheet is indicative of himself being capable of passing the said examination without making any copy is a factor militating against the said aspect. In the same context the learned Counsel also requested us to take into account the short duration in which the petitioner had given the paper being a factor reflective of the ability of the petitioner.

36. Though the said submission apparently appears to be attractive the same clearly appears to be misplaced in context of judging the issue which was related with the aspect of petitioner possessing copying paper and not related with the ability of the petitioner. At the first place it can be said that even accepting the fact that petitioner was provisionally found entitled for 63% marks on the basis of the fresh answer sheet given by him during the remaining period still it is not clear whether the said answer sheet was containing any answers given by him for said question No. 2B(3) and in the event of having given the same "the same was containing adverbam matter as found on printed one of the chits out of nine chits allegedly used by him while writing answer sheet which was seized from him. In view of the same no cognizance of the same for the purposes as canvassed can be taken. In the said context we also make it clear that even the fact of petitioner in the said second answer sheet having answered the said question or the said answer in event of being found containing adverbam

matter as found one of the sheet may not be again decisive having regard to the nature of the charge against the petitioner and the allegation of himself being found possessing not one but nine chits. Ourselves being not required to consider the said aspect as the relevant material regarding the same being not placed before us in present petition by either of a party we are refraining ourselves from deciding the said aspect and merely observing that the said feature pointed also cannot be said to be having effect as tried to be canvassed.

37. Now before considering the said claim of Gillurkar in light of the material pertaining to other witnesses regarding the relevant facet, it will not be out of place to state that during the cross-examination he was not tested to ascertain whether he had told Shri Shelokar of the nine paper chits being found within the paper of the petitioner. In view of the same, it is difficult to accept that the claim staked by Shri Shelokar of Shri Gillurkar having told him accordingly cannot be said to have been established. Similarly the evidence of Shri Gillurkar who had seized the said papers is not adduced regarding the vital aspect whether the said chits were bearing signature of the petitioner and that of the other members.

38. No doubt, the statement of Additional incharge Shri Shelokar reveals of having stated of nine objectionable papers being found in the paper of student, he had candidly admitted during the cross examination that he had not personally seen the same. However, he gave the correct number of the room in which the said student was having a seat. The further answer given that there was distance of 20 ft. between him and flying squad also clarifies the reason for which he had not personally seen seizure of the copy papers from the student. To the question as to who had shown him the same, he had answered that Gillurkar had given him in the answersheet. Thus, considering his entire evidence, his inability to answer the basis on which he was saying that the same were found with the student or the relevant facets spoken by him during the cross examination being not mentioned in the report cannot be said to be a factor affecting his claim that on the relevant day petitioner was appearing for examination at L.A.D. Centre in the afternoon and Flying Squad had visited the said centre, all the class rooms were inspected by the said squad, he had visited the class rooms along with them and nine objectionable papers were found. Needless to add that the same to such extent corroborates the evidence of member of flying squad Shri Gillurkar. Such a conclusion is inevitable as the answers given by him during cross examination impliedly explains the reasons because of which he became aware of copying papers being found with the student i.e. Shri Gillurkar having given the said papers in answer sheet to him. Probably because of the same he had stated in his statement of the papers being found in the paper (answer sheet) of the student. At any rate, the answers candidly given by him during the cross examination also leads to the conclusion of his evidence being reliable for the aspects spoken by him except the precise place at which the said copy papers were found.

39. Now considering answers given by Centre Incharge Smt. Mangala Baitule,

the same only reveals that flying squad had visited on two occasions and on first occasion there were 34 members in the said squad, while on the second occasion including female, there were members. It further reveals that firstly squad had visited at about 4.30 pm and secondly 15 to 20 minutes thereafter and during first visit she was in the office while during the second visit she had visited room No. 204. Significantly enough she replied of having not taken signatures of witnesses on Form No. 31 and having not recorded the remarks on the said form. She also replied that papers found with the student was not bearing signature of the student. She explained of not mentioning the remarks on Form No. 31 on the count of being busy with checking of the other students.

40. Thus, considering the evidence of Centre Incharge Smt. Baitule, she had not claimed of having witnessed the event of seizure of 9 chits from students effected by Shri Gillurkar. During the cross examination hardly anything has surfaced affecting the said claim staked by Shri Gillurkar. Her answer of having not taken the signatures of the witnesses on Form No. 31 apparently appears to be erroneous probably due to the passage of time in between, as the said form No. 31 perused is found containing such signatures of witnesses including that of the students and his say. It has been already stated that the stand of the petitioner of the same being later on fabricated is devoid of merit due to the same is also bearing the signature of student petitioner .The said reasoning would be equally applicable for not giving any undue credence to the said erroneous answer given by Smt. Baitule. Thus, alike the evidence of Shri Shelokar, her evidence also corroborates the evidence of Shri Gillurkar in particular and that of Shri Shelokar regarding the relevant aspects. Her evidence and so also the evidence of Shri Shelokar has absolutely no effect of destroying the evidence of Shri Gillurkar and particularly the fact established through his evidence of copying papers being found with the petitioner. Thus, the detailed discussions made hereinabove clearly reveals that Shri Gillurkar deserves to be termed as reliable witness. Hence the same merely because there is no corroboration from the oral evidence of other witnesses, it cannot be gainsaid that crucial aspects of copy paper being found with the petitioner is not established.

41. Now considering the evidence of Shri Gillurkar, claims staked by him, the place at which the papers were found as claimed by him, the fact of Flying Squad having visited the room at about 4.30 PM and during the said visit, copying papers were found with the petitioner, the explanation advanced on behalf of petitioner being found to be false within themselves form a formidable chain leading to sole inference of the copying papers being found with the petitioner as claimed by Shri Gillurkar as the same clearly rules out there being any other reasonable hypothesis of such a papers with one containing matters as found written in the paper of the petitioner, being found in the said room during the second visit of the flying squad.

42. Learned counsel for the petitioner having not annexed the statement of the

cross examination of Invigilator, we had no advantage of taking into consideration the matters spoken by her i.e. the cross examination for which this court has given the directions to respondent No. 1 during the earlier order. Similarly, though the petitioner has referred in the petition of there being a witness saying that chits were seized from the floor of examination room, no such statement of any witness was brought to our notice for considering the same. It will not out of place to add that no such claim is found in the statement of invigilator Smt. Apurva Pathak of which the copy is annexed with the petition.

43. The perusal of the decisions in case of Swapna since minor through her natural guardian father, Shri Tulsidas Nanaguru Gajare Vs. The Divisional Secretary, Maharashtra State Board of Secondary and Higher Secondary Education, and the decision in a case of Sarat Kumar Panigrahi Vs. The Secretary, Board of Secondary Education, Orissa, upon which learned counsel for the petitioner had also placed reliance also do not show that the same are helpful to the petitioner in any manner. Such conclusion is inevitable as the decision in a case of Swapna (supra) reveals the same being altogether upon the different aspect of the reason being not recorded in the order in question in the said case, the same was quashed and set aside. In the present case the order impugned containing the reasons the said decision would not be helpful to the petitioner. Similarly, the decision in a case of Sarat Kumar (supra) reveals that in the said case the report was not bearing the signature of invigilator, the Centre Superintendent who has signed the said report was not present in the room, there was controversy regarding the paper seized i.e. whether the same were hand written or sign, the paper was for the Oriya language while the material seized was containing Sanskrit script, in light of the said circumstances, the order in question in said case was quashed and set aside. The said decision also cannot be said to be useful to the petitioner as it is already observed earlier that the Form was found to containing signature of the invigilator.

44. The learned counsel for the petitioner has lastly urged that in event of this court being not inclined to accept his submissions then the lenient view be taken as taken by the Apex Court in the case of S.C. Udhawan Vs. Punjab University, , by taking into consideration the future events occurred with regard to the appellant involved in unfair means in the said case. The learned counsel urged that in the said case the Hon"ble Apex Court having due regard to the facts that the appellant student therein having completed education by topping the examination and, thereafter, himself being employed had ordered that use of unfair means during the examination held in 1964 would not be considered as a stigma for any future appointment or promotion which the said appellant may seek. It was contended that the same may save the career of the student petitioner as the further events occurred revealed that during remaining part he had completed the said paper and provisional result declared as per the directions given reveals of having passed the said examination with 63% marks. It was urged that so also he has been successfully continuing his education. It is urged that having regard to the same the lenient view may be taken of

permitting him to continue the education. It was contended that no useful purpose would be served by taking strict view as the same would ruin career of the petitioner or at least few years in spite of himself having passed the further examination at which he was permitted to appear.

45. The said submissions were rightly opposed by the learned counsel for respondent No. 1 by pointing out that no unduly harsh and only the prescribe punishment under the rules has been given to the petitioner and making such a concession would amount to giving the premium in spite of the petitioner having indulged into unfair means. The learned counsel was also very much right in submitting that passing of the further examination to which the petitioner was permitted to appear being only on equatorial basis and ultimately petitioner being found guilty of unfair means the said advantage given to him during pending of inquiry in progress now cannot be continued.

46. In the premises aforesaid, we are unable to find any fault with the findings arrived by the inquiry committee and/or the order passed by respondent No. 1. Hence, we do not find any merit in the petition and dismiss the same. Rule stands discharged accordingly.