

(2009) 07 BOM CK 0141

In the Bombay High Court

Case No : Writ Petition No. 3970 of 2009

Miss Gitanjali Bharat Sangale

APPELLANT

Vs

The Maharashtra State Board of Secondary and Higher
Secondary Education, Aurangabad Division and Shri Vitthal
Secondary and Higher Secondary Vidyalaya

RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 6 BOMLR 161

Hon'ble Judges : P.V. Hardas, J;A.V. Potdar, J

Bench : Division Bench

Advocate : S.P. Brahme, for the Appellant; A.R. Nikam and P.B. Pawar, for the Respondent

Judgement

A.V. Potdar, J.—Rule. Rule returnable forthwith. With the consent of learned Counsel for the parties this petition is heard finally at the stage of admission.

2. By this petition, under Article 226 of the Constitution of India, the petitioner challenges the action of respondent No. 1 of debarring her performance in HSC examination up to October 2009 and seeking directions to declare her result for the examination conducted in the month March 2009.

3. The facts, which gave rise to file the present petition can be summarized as follows-

a) The petitioner is a 12th Standard student of respondent No. 2 College in science faculty for the year 2008-09. The petitioner suffers from permanent disability of amblyopic blindness to the extent of 40%. Examination for Chemistry-I paper was scheduled on 04.03.2009. According to the petitioner due to her illness, she reached 5 minutes late to the examination hall. Thereafter answer sheet was provided to her on which she put her serial number. However, her blank answer sheet was seized alleging that she was indulged in malpractice.

b) On 25.03.2009, the petitioner received a show cause notice alleging that she had kept a printed material of physics subject with her and hence committed malpractice during the examination. The said printed material was attached to the answer sheet. The petitioner tendered her reply to the show cause notice. Petitioner also appeared before the Enquiry Officer. On 04.06.2009, respondent No. 1 declared result of examination which indicates that her entire performance was canceled and she is debarred from examination up to October 2009. Hence, on 12.06.2009, she submitted an application to reconsider her case. However, it was not responded by the respondent No. 1. Therefore, present writ petition.

4. Respondent No. 1 filed affidavit in reply. It is not disputed that the petitioner appeared for 12th Standard (Science) examination in March 2009. It is also not disputed that the paper of Chemistry-I was scheduled on 4.3.2009 and petitioner appeared for the same. It is contended that when a flying squad member recovers any copying material from a student, fresh answer sheet is provided to the student. The concerned member only prepares a report in respect of the copying case along with statement of concerned student, invigilator and statements of other students. It is alleged that the Tahsildar, Kaij, who was head of the flying squad prepared his report, recorded statement of the petitioner in the prescribed format and referred the same to the office of the board. On the basis of the said report case No. B-202 came to be registered against the petitioner and on 23.03.2009 a show cause notice came to be issued to her. The petitioner was called upon on 10.04.2009 in the office of the Board for hearing. It is alleged that in her statement, the petitioner has stated that as her seat number was near a window, somebody had thrown the copying material in the hall and the same fall in front of her and that she was not concerned with the same. It is also contended by her that not a single word has been written by her from the said material in her answer sheet. It is further contended in the affidavit in reply that on 10.04.2009, the petitioner appeared before the Enquiry Officer along with her parents where she was provided with a questionnaire, which she answered. After the enquiry, the enquiry officer came to a conclusion that the petitioner is guilty of copying and accordingly recommended punishment as per Rule 14 of the Rules and submitted his report. Thus, according to respondent No. 1, proper opportunity was given to the petitioner. It is also contended that the petitioner has given contrary statements in her explanation during the enquiry on 10.04.2009 than the statement given by her immediately after the copying material was recovered from her. It is specifically contended in para 8 that even though copying material recovered from the petitioner on 04.03.2009 was in respect of physics paper-II, examination of which was held on 03.03.2009, yet she might have brought the said material on the date of physics paper II. According to respondent No. 1, instructions at serial No. 1 on the answer sheet specifically mention that the student is prohibited from bringing any books in the examination hall. Respondent No. 1 specifically contended that if this Court would entertain the petition and grant the relief in favour of the petitioner, then other students, who are punished for malpractice, would also ask for the same

relief and in that case it would be very difficult for the board to maintain the discipline in the examination system. Thus, respondent No. 1 requested for dismissal of the writ petition.

5. In this backdrop, heard learned Counsel for the parties.

6. During the course of submissions, it is contended that the report submitted by the flying squad nowhere discloses as to whether the copying material was recovered from the person of the petitioner or from her possession. It is contended in the said report that the petitioner was caught while copying in the examination hall. Thus, considering the vague report and the enquiry conducted on the basis of this vague report, which is not supported by cogent evidence that the copying material was recovered from the possession of the petitioner vitiates the same. In support of his submissions learned Counsel for the petitioner relied on the observations in para 7 and 8 of the judgment reported in Shailaja through her natural guardian Ramakant Tarachandji Paliwal Vs. Divisional Board of Secondary and Higher Secondary Education, Nagpur Division, .

7. During the course of submissions, respondent No. 1 heavily relied on the judgment in Writ Petition No. 3423/2002 in the matter of "Bhagayashri Sharad Selmohkar v. The State of Maharashtra" dated 27.01.2003. It is contended that considering the observations in paragraphs 11 and 12 of the said judgment, the petitioner be held guilty for malpractice during examination. Further reliance is placed on the ruling reported in Karnataka Public Service Commission and others Vs. B.M. Vijaya Shankar and others, . It is observed in the said judgment that when there are specific instructions not to put any marking on the answer sheet, which may disclose identity of the candidate appearing in the examination that would amount to misconduct and malpractice during examination. With due respect, the ratio laid down in the said judgment, is not applicable to the present case. Further reliance is placed by learned Counsel appearing for respondent No. 1 on the judgment reported in Director (Studies) and Others Vs. Vaibhav Singh Chauhan, . On perusal of this judgment it reveals that it is the case where during the course of inquiry, respondent, who was candidate facing examination, has admitted his guilt and put it in writing in his own handwriting that the copying material, which was seized from his possession was really recovered from him while he was writing the answer sheet. This is a case based on the admission of guilt by the student, which is contrary to the present case and hence the ratio as laid down in this judgment cannot be made applicable to the present case.

8. Considering these submission and after perusal of the record it appears that in the report submitted by the center in charge it is mentioned that while the student was allowed to enter in the examination hall, she was searched and at that time copying material was found with her. It is reported by the flying squad that the student was caught while copying. So far as the statements of the students adjoining to the petitioner are concerned the same do not disclose that they have any knowledge about the alleged incident. The report of the invigilator shows that for the first half an hour he was busy in sticking the bar code stickers

and he has no knowledge about the alleged incident. Thus, statements of the adjoining students as well as invigilator do not support the report of the flying squad. Now, the question arises that when the petitioner was searched while admitting in the examination hall and it is averred that the copying material was found in possession of the petitioner then how the petitioner was allowed to enter in the examination hall and how the report of the flying squad can be believed that the petitioner was caught while copying in the examination hall. Thus, the report is not sufficient to hold that the copying material was really recovered from the petitioner. In this light, if the report of the enquiry officer is perused then the report of the center in charge, that the copying material was recovered from the student while she was writing the answer sheet, cannot be believed, as the student, if found with copying material while writing answer sheet, her paper will not be blank, which was seized from her possession. This fact clearly indicates that the material on record as well as report of the enquiry officer is not sufficient to hold that really the copying material was recovered from the petitioner. In the premise, the report of the enquiry officer contending that the petitioner is guilty of malpractice as carrying copying material with her in the examination hall and awarding punishment under Rule 14 thereby debarring her from performing HSC examination till October 2009 needs to be quash and set aside. Accordingly, order of the enquiry officer and punishment awarded to the petitioner under Rule 14 is quashed and set aside. Result of the petitioner be declared forthwith.

9. Rule is thus made absolute on the above terms with no order as to costs.