

(2008) 02 BOM CK 0164
In the Bombay High Court
Case No : Writ Petition No. 954 of 2006

Miss Trupti Mohan Narkar

APPELLANT

Vs

Maharashtra State Board of Secondary and Higher Secondary
Education, Pune Divisional Board and The State of
Maharashtra

RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Citation : (2008) 2 ALLMR 636 : (2008) 2 BomCR 520 : (2008) 4 MhLj 152

Hon'ble Judges : Roshan Dalvi, J;Ranjana Desai, J

Bench : Division Bench

Advocate : M.L. Patil, for the Appellant; Deepa Chavan and M.P. Thakur, AGP for
Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Roshan Dalvi, J.—The petitioner was a student of Std. XII, who appeared for HSC examination in March 2005. On the 4th day of the examination, which was on 5.3.2005, the petitioner claimed a writer to write her examination paper of Physics II with permission from the Chief Conductor of the examination, one Mr. T.B. Mane at the Examination Centre, upon a Medical Certificate of one Dr. Sudhir Shinde, countersigned by the Medical Superintendent of the local rural hospital. The petitioner's father applied for the writer on her behalf by his letter dated 5.3.2005 addressed to the Conductor of the Centre of the examination annexing the doctor's certificate also dated 5.3.2005. The medical certificate showed that the petitioner had "high grade temp with vomiting with vertigo and right shoulder pain." It also showed history of fall due to vertigo for which she had pain in her right shoulder. Upon such a certificate she was allowed the use of a writer.

2. The petitioner was issued a show cause notice alleging malpractice on 29.3.2005 in reply to which she claimed justification for being provided a writer by her letter dated 5.4.2005.

3. An inquiry was sought to be held in that respect. The petitioner was called to appear before the Inquiry Officer on 27.4.2005 by a notice dated 13.4.2005. The petitioner replied the notice, but failed to attend as directed. The petitioner's result was reserved when the HSC examinations results held in March 2005 were declared.

4. It appears from the record that a consolidated inquiry was held against eight other similar students who had obtained the use of a writer from the same Conductor of examinations Mr. T.B. Mane at the relevant centre in March 2005 by a notice dated 20.4.2005 calling upon them to appear before the Inquiry Officer on 27.4.2005. Mr. Mane himself was also summoned before the Inquiry Officer by the respondents' letter dated 13.4.2005. It further appears from the record that all the other candidates have appeared before the Inquiry Officer. The examinations of all the candidates have been cancelled as per the decision of the Autonomous Committee. All of them have accepted the findings of the Inquiry conducted and the consequent punishment.

5. Only the petitioner failed to appear. The Committee had passed Resolution No.75 on 5.7.2005 upon the petitioner's absence despite two notices sent to her by RPAD. Pursuant thereto, the Committee cancelled the petitioner's examination by an order dated 12.7.2005 which decision came to be challenged by her in Writ Petition No. 5549 of 2005 filed by her.

6. By an order dated 28.10.2005 in the said writ petition, the said order dated 12.7.2005 was set aside and the petitioner was directed to appear before the Committee.

7. As per the said order, the 1st respondent Board sent notice letter dated 10.11.2005 by RPAD to the Centre in-charge, Examinations, Custodian, writer and as well as the petitioner (student) that an inquiry would be conducted on 18.11.2005. The petitioner was issued a notice dated 11.11.2005 by RPAD under Rule 5 of the Inquiry Proceedings to appear before the inquiry at 11 A.M. on 18.11.2005. She was allowed to take inspection of the documents/evidence against her if she wished. The charge under the said notice was that the petitioner asked for a writer though there was no necessity.

8. It is the contention of the 1st respondent that upon the inquiry being held, the aforesaid consolidated position of the Conductor T.P. Mane having allowed as many as 9 students to appear in the said examination at the same centre in March 2005, emerged. The Inquiry Officer sent his report to the Board's Autonomous Committee. The Committee affirmed the previous punishment. The petitioner was accordingly informed by the letter of the Divisional Head, Pune, Divisional Board dated 23/26.12.2005, Exhibit-K to the petition. The petitioner's examination result stood cancelled. The said order/letter is now impugned in this petition along with the Resolution/Decision of the 1st respondent, Exhibit-O to the petition.

9. The decision, Exhibit-O, sets out what had transpired at the time of the

examination and that the petitioner appeared in her examination through a writer, though a writer was not necessary and also without the prior permission of the Board. She did not previously appear before the Committee, though called upon twice. The Conductor of examination centre T.B. Mane had given permission to 9 students to appear similarly. The proposal of writer was submitted to the Board one month after the examinations. Hence, the petitioner appeared in the examination through a writer, without prior permission of the Board as required under the Rules. It also sets out that no written advice was given by the 9 students, including the petitioner or their writers, no recommendation of the Principal was taken, the Custodian or the Board was not intimated, even oral permission was not obtained. It was decided that the matter is serious as per the Board's Education Schedules and Private School Services Penal Code, 1981. Hence, the decision to abide the punishment of cancellation of examinations of all the 9 students, including the petitioner was taken.

10. The petitioner has challenged the said order on the ground that though the charge under the show cause notice was that the writer was availed of by the petitioner without necessity, the decision, Exhibit-O, shows that the ultimate finding was that the petitioner's act was without prior permission from the Board and, therefore, the petitioner has been punished. The punishment is given under item A(4) of the Schedule of Punishment. The petitioner contends, in paragraph 4 of the affidavit in rejoinder that item A(4) is "taking facility by submitting false medical certificate." This aspect, though alleged, has not been shown. Nevertheless, it is seen that by annexing and relying upon the doctor's certificate the petitioner's father applied for and obtained the permission to avail of a writer for the paper on 5.3.2005. Such acts have been committed by as many as 9 students from the same centre and under the allowance granted by the same Conductor T.B. Mane. The certificate itself shows nothing but shoulder pain at the time of examination. The facility is to be offered to students only in extremely exceptional circumstances and with prior approval of the 1st respondent Board to be obtained as an emergent allowance by the quick means laid down under the Rules. Those rules were not followed.

11. The procedure laid down for the grant was bypassed and ignored. The absence of permission and even an application for such permission rendered the whole act without any authority of law and totally against the established procedure. Hence, the finding that the permission given by the Conductor, without reference to the Board was illegal is well founded. The doctor's certificate exhibited no necessity. The action, therefore, was illegal. There is no dichotomy between the charge, the findings and the consequent punishment, though it is set out in different words.

12. It is the substance and content of the charge that has to be seen. The findings in the inquiry are consequent upon the charge. They relate to it and are consistent with the charge. The reliance upon the only document relied upon by the petitioner is the basis of the findings. The punishment refers to the initial act.

It is misleading to contend that the charge is different from the findings or that the punishment has no relation to the charge. We must consider the substance and not the style of the entire exercise.

13. Mr. Patil, on behalf the petitioner, has relied upon the judgment in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, following the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, holding that orders cannot be construed in the light of explanations subsequently given as to what it meant and must be construed upon its own language. We do not find any reason given by the 1st respondent inconsistent with the charge levied or the findings arrived at. Mere difference in words in the charge, findings and order do not matter. The substance and the contents are the same, arising from the same act complained of and charged.

14. Mr. Patil further relied upon the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, in which it is held that once a candidate is allowed to take the examination by issue of an admission card, his candidature cannot be withdrawn by the University because of shortage of attendance for which the admission card could not have been issued. The conclusion in that case has been arrived at on a completely different premise. It is correct that if the University itself, through its officers, issues the admission card, it is estopped from contending that the candidate is not competent to be issued such a card. That act was done in accordance with law. The work of the officer binds the University on whose behalf the officer acts. The act is not fraudulent. It is not meant to defeat any rule of the University. It is an act, done within the authority of the officer issuing the card, but under a mistake. Hence, the contract of the University by its officer is not vitiated by fraud. In this case, the act of the Conductor was fraudulent. It was meant to defeat the rules of the University. The knowledge of the rules is imputed upon the conductor of examinations. He flouted the rules. He allowed the impermissible. His act and conduct cannot bind the 1st respondent. No illegality can be condoned. The act is vitiated on the ground of fraud alone. The petitioner, who is a party to the fraud, is alone responsible for the fraudulent act. Her candidature got vitiated by her illegal act of obtaining a writer without the prior permission of the Board, which was not even applied for by either herself or the conductor. The fact that her father made the application for the writer as soon as she suffered a bout of vertigo, which resulted in the fall and the consequent pain, fever and even vomiting, shows that he knew his daughter's rights under the rules of the Board. The knowledge of the complete rules can, therefore, be imputed upon him. Yet these rules were not followed. The result is not the act of the Board, by its officer, which could bind the Board. It is the independent act, illegal in its entirety, which can be imputed upon the petitioner and the conductor alone. Neither of the parties to the fraudulent contract can bind the Board.

15. An inquiry has been held as directed. All the relevant witnesses were issued notices. A date was fixed. Inspection of the evidence/documents was offered.

The petitioner was heard. The cases of all the 9 errant students and the only one errant conductor were inquired upon and seen. The facts were elicited. The findings were recorded. The consolidated position that emerged showed the work of the conductor in unison with as many as 9 students of the kind at only one Examination Centre. The substance of the entire exercise showing the position that emerged must be considered in its totality. All the other candidates accepted the position and the punishment. Only the petitioner challenged the exercise. The challenge must be viewed as a whole.

16. Mrs. Deepa Chavan on behalf of respondents drew our attention to the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, . It is held that the Board is not called upon to follow the strict procedure as required under the Evidence Act. It is held in that judgment that the application of principles of natural justice must depend on the facts of each case, the nature of the inquiry, the effect of the order on the rights of the person and the attendant circumstances. The result is dependent upon preponderance of probabilities and not proof beyond reasonable doubt. The probative value of the evidence in the inquiry is required to be judged upon the particular facts and circumstances of the case. The court cannot easily interfere with an independent inquiry taking into account the actual fraud. It is only for the Board to determine the punishment.

17. The student was the beneficiary of the fraud. Hence, as in the case of Maharashtra State Board of Secondary and Higher Secondary Education (supra), the conclusion of the Committee cannot be interfered with. The punishment is not unduly harsh or disproportionate with the errant behaviour and the illegal transaction. No interference is, therefore, called for.

18. The petition is dismissed with costs. Rule stands discharged.