

(2000) 11 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No. 3733 of 2000

Pankaj Ravindra Phalak, Minor, Through Guardian Father

APPELLANT

Vs

Maharashtra State Board of Secondary and Higher Secondary
Education, Nashik

RESPONDENT

Date of Decision : 20-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 —
Regulation 102(3)

Citation : (2001) 1 BomCR 815 : (2001) 1 BOMLR 724 : (2001) 1 MhLj 182

Hon'ble Judges : N.V. Dabholkar, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : S.R. Barlinge, for the Appellant; P.K. Joshi, for the Respondent

Judgement

B. H. Marlapalle, J.—The petitioner, a minor, who has been represented through his father, has brought in question the punishment order dated 26th July, 2000 passed by the respondent Board. The Board has submitted the original file of inquiry before us and we have heard the learned counsel for both the sides at length. We, therefore, deem it appropriate to decide the petition finally, even in the absence of the return of respondent Board.

2. The petitioner appeared for S.S.C. examination and secured 80.53% marks in the year 1998. In due course he appeared for the H.S.C. examination and his results were declared as "passed". He had secured 84.17% marks in the said examinations held in February/March, 2000. He received a notice dated 22nd May, 2000 from the Board calling him for an inquiry to be held on 29th May, 2000 at Nasik. Pursuant to the inquiry the impugned order of punishment has been passed.

3. Shri Barlinge, the learned counsel for the petitioner submitted before us that the petitioner was not made aware as to the details of the charges levelled against him or the complaints of unfair means adopted by him during the

examination that he wrote in February/March, 2000; petitioner was not given an opportunity to submit his say to the charges, if any, and therefore, the inquiry is vitiated. Consequently, the impugned order of punishment must go. In support of his contentions, the learned counsel relied up on Judgments of this Court in the case of "Jayesh Bhupatrai Parikh v. University of Bombay, and in the case of Tejsingh Arvind Deshmukh v. Maharashtra State Secondary and Higher Secondary Education Board, Nagpur. He has also relied upon a judgment of the Gujarat High Court in the case of Sunny Dharampalsingh Chaudhary v. Gujarat Secondary Education Board and another.

4. The original file presented before us by the Board shows that on 10th of May, 2000 a complaint was received stating therein that the petitioner was attending private tuitions conducted by one Shri B. U. Patil. who also happened to be one of the Moderators for the H.S.C. examination and this moderator had known in advance that the petitioner had made marks on his Physics-I paper for identification. The complaint further stated that Shri Patil searched the petitioner's paper from the bundle available with Shri V.N. Mahajan, another moderator, and he located the same. At the instance of Shri Patil, Shri Mahajan, not only increased the marks to 32 but indeed corrected the marks given by the examiner from 25 to 32 in Physics-I paper. The Board, therefore rightly thought it fit to inquire into this complaint and the action proceeded. Pursuant to the notice dated 22nd May, 2000 the petitioner appeared before the Inquiry Committee and submitted in writing his defence on each of the queries/ charges against him namely (1) marking on the cover page of the Physics-I paper, (ii) his style of writing "1" in Marathi and "8" and "9" in English, (iii) scratching on page No. 26 of the answer book. So far as the charge No. 1 was concerned, he admitted that he had made those marks " " and "*" on the cover page of the paper but the said marking was unintended. In addition, he stated that when this marking was pointed out to him he corrected himself in the subsequent papers and, therefore, it was not any unfair means that he had indulged in. He gave his clarifications regarding his style of writing certain figures and so far as the scratching of writing on page 26 is concerned he stated that after the examination time was over, he suddenly realised that he had made a mistake in answering the question on that page and, therefore, he started correcting in different ink. We have also noted from the file that Shri Vasant Narayan Mahajan was examined before the Committee and Shri D. Y. Patil, who was the examiner was also examined. Shri D. Y. Patil very clearly stated that the initials after the corrections of marks in red ink were not his and he indicated his full signature as well as the initials in writing whereas Shri Mahajan, during the course of inquiry, admitted that he not only increased the petitioner's marks over and above the marks given by the examiner, in his capacity as a Moderator, but he also went to the extent of correcting the marks given by the examiner on the cover page. He pleaded guilty and submitted before the Committee that whatever punishment is awarded to him he would be bound by the same.

5. The petitioner, in his handwriting, has submitted his explanation before the

Inquiry Committee on 29th May, 2000. The explanation indicates, beyond any doubt, that he was made aware of the charges against him. We, therefore, find no merit in the contentions of Shri Barlinge that the petitioner was not provided an opportunity to reply the charges or that he was not knowing the charges.

6. In the case of Jayesh (supra) the learned Single Judge of this Court very aptly reproduced the observations of the Apex Court in the case of Board of High School and Intermediate Education, U.P., Allahabad and another v. Bagleshwar Prasad and another, and reproduced the observations therein, as under :-

"In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the University or appellant No. 1 set up Inquiry Committees to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the Jurisdiction of such domestic Tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of the adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which educational institutions have to face from time to time is a serious problem and unless there is jurisdiction to do so. Court should be slow to interfere with the decision of domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities under Article 226, the High Court is not sitting in appeal over the decision in question: its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quash that order. But the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Inquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such inquiries. the Tribunals must scrupulously follow rules of natural Justice; but it would, we think, not be reasonable to import into these inquiries all considerations which govern criminal trials in ordinary Courts of law."

7. We have perused the answer book in Physics-I paper and on the cover page itself he has made three prominent markings, two by arrows and two by stars. Even for a layman these markings are sufficient to identify his paper. He said, during the inquiry, that this was a mistake he committed unknowingly and he had no intention to make a marking deliberately and contravene condition No. 17, which has been set out on the last page of the answer book. The file shows that this paper he answered on 25th February, 2000 whereas the paper in English subject was answered by the petitioner on 23rd February, 2000 and there is no mark. His contention that this was his usual practice. is falsified. In fact, the petitioner did not stop on Physics-I paper itself, he repeated the said marking for Physics-II paper which he answered on 26th February, 2000. On this paper he

made marking by stars. On no other papers answer books he has made any such marking and this is enough to come to a conclusion that the markings were pre-designed.

8. During the course of inquiry it was also revealed that the petitioner was attending private tuitions conducted by Shri B.U. Patil who was one of the Moderators along with Shri Mahajan. Shri Mahajan has accepted his misdeeds in writing as we have observed hereinabove. The question that is posed is whether the misdeeds of Shri Patil and Shri Mahajan could entail punishment against the petitioner and this very question has been replied by the Apex Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education v. K. S. Gandhi and ors., "in the following words :

"Unless either the examinee or parent or guardian approached the fabricator; gave the number and instructed him/them to fabricate the marks. it would not be possible to know their number to fabricate. The act of fabrication is an offence. Merely that it was done in one subject or more than one makes little difference. Its gravity is not mitigated if it is committed in one subject alone. This is not an innocent act or a casual mistake during the course of performance of the official duty. It was obviously done as a concerted action. In view of the admitted facts and above circumstances the necessary conclusion that could unerringly be drawn would be that either the examinee or the parent or guardian obviously was a privy to the fabrication and that the forgery was committed at his or her or parent's or guardian's behest. It Is, therefore, clear that the conclusion reached by the Standing Committee that the fabrication was done at the instance of either of examinees or their parents or guardians Is amply borne out from the record."

The observations of the Apex Court are squarely applicable to the instant case as well.

9. So far as the adequacy of evidence is concerned, the same has been also dealt with by the Supreme Court in the said case. The judgment cited by Shri Barlinge in the case of Tejsingh Deshmukh (supra) has been impliedly overruled and, therefore, would not operate as a binding precedent in view of the Supreme Court's judgment In the case of Maharashtra State Board of Secondary and Higher Secondary Education (supra). We must note that the Division Bench judgment in the case of Tejsingh (supra) was delivered on 9th February, 1990 whereas the Supreme Court judgment came thereafter on 12th of March, 1991. Shri Joshi, the learned counsel for the Board has rightly relied upon another judgment of a Division Bench of this Court in the case of Umesh Vithalrao Balpande and another v. Maharashtra State Board of Secondary and Higher Secondary Education, Nagpur. This case was decided on 26th September, 1991. A student who was alleged to have indulged in unfair means, was called by a telegraphic notice to appear before the Inquiry Committee, on 19th August, 1991. The student appeared before the Inquiry Committee, submitted his explanation which was not accepted by the Inquiry Committee. This Court held

that the inquiry was not vitiated. In the case at hand a similar contention has been raised and gets answered by the decision of this Court in the case of Umesh (supra).

10. We have also noted that the Inquiry Committee has considered all the relevant aspects, applied its mind to the contentions raised by all the Individuals, who appeared before it and given a reasoned finding. The conclusions reached by the Committee are sound and supported by proper reasons. Under Rule 102(3) of the Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 the Board is empowered to punish the student if a case of fabrications of marks is reported and established. The punishment given to the student, In the instant case, is on two counts viz. (i) he himself indulged in unfair means and (ii) he being party for increasing his marks at the hands of Shri Mahajan, the Moderator, for no valid reasons and, in fact the marks were increased illegally and by indulging in motivated irregularities.

11. Under the circumstances, we find no case to interfere in the impugned order passed by the Board and we confirm the entire action taken by the Board. The petition is, therefore, dismissed. Rule is discharged with no order as to costs.