
(2001) 06 BOM CK 0005

In the Bombay High Court

Case No : Writ Petition No. 1231 and 1313 of 2001

Pashmeen N. Ghia

APPELLANT

Vs

Maharashtra State Secondary and Higher Secondary Board
and Another

RESPONDENT

Date of Decision : 22-06-2001

Acts Referred:

Citation : (2002) 2 ALLMR 115 : (2002) 104 BOMLR 666

Hon'ble Judges : S.A. Bobde, J;A.P. Shah, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.A. Bobde, J.—Rule.

Respondents waive service.

By consent, rule is made returnable forthwith.

Heard parties.

2. These two writ petitions are preferred by students, who have been found guilty of writing their roll numbers on the answer sheets in a place other than the place meant for the purpose, in disregard of instructions given by the Maharashtra State Secondary and Higher Secondary Education Board. Their performance at the examination has, therefore, been cancelled.

3. The students are found to have violated the instructions during the course of the Higher Secondary Examination conducted by the respondent Board in the months of February and March, 2001. The petitioner in Writ Petition No. 1313 of 2001 appears to have written his roll number on all the sheets, including the subject of Computer Science, which is not taken into account for the purpose of admission to the Engineering College which he desires to pursue. The petitioner in Writ Petition No. 1231 of 2001 is said to have written his roll number in the internal pages of the main answer book in the paper of Chemistry.

4. Both the petitioners are meritorious students. The Petitioner in Writ Petition No. 1313 of 2001 has secured 86.8% marks in the S.S.C. Examination and 83.5% marks in the First Year Junior Commerce Examination. The Petitioner in Writ Petition No. 1231 of 2001 secured 95.5% marks at the I.C.S.E. Examination and 80% marks in the First Year Junior Commerce Examination.

5. The Petitioners were all served with show cause notice dated 21.4.2001. The petitioner in Writ Petition No. 1313 of 2001 received an order dated 31.5.2001 cancelling his performance in the Higher Secondary Examination. The other petitioner in Writ Petition No. 1231 of 2001 did not receive any such order but was otherwise informed by the College that his performance was cancelled. According to him, the notification cancelling his performance has not been served upon him either through school or college.

6. Item II of the Schedule of Punishment as amended reads follows:

II. Writing the seat number in the answer book Cancellation of perform-supplement in any place other than in the space once and debarring from provided on the first page or writing name or appearing in the subs-affixing any mark or making any symbol or in any quant examination. other manner attempting to reveal identity of the candidate.

A similar instruction is reproduced from the hall ticket which reads as follows:

11. Candidates are forbidden to write their Seat Numbers either in words or in figures on any part of the answer books and supplement except on the cover page in the space provided for the purpose. Performance of the candidates for breach of above instructions will be cancelled.

7. The principal contention of the learned Counsel for the petitioners in the writ petitions is that the inquiry has not been properly conducted. The petitioner in Writ Petition No. 1313 of 2001 has averred that at the time of inquiry, though the petitioner wanted to present his parents as witnesses, they were not allowed to enter the room. According to him, the inquiry was conducted in a cursory fashion. Three students were called into the room at the same time and in spite of the fact that the Petitioner had already submitted a written explanation, he was again instructed to write explanation on a sheet of paper.

8. The Petitioner in Writ Petition No. 1231 of 2001 has similarly averred that he was ordered to appear before the Inquiry Officer along with the others students against whom totally different charges were framed. According to him, the Inquiry Officer did not have even the relevant answer book of Chemistry with him at the time when the petitioner appeared before him. He was neither provided with a copy of the statement of the Examiner or Supervisor which has been relied on by the respondent-Board against him.

9. The petitioners further point out that the order cancelling their performance does not give any reasons but merely states that they have been found guilty of having written their roll numbers in their answer books. In these circumstances,

the petitioners submit that the inquiry and cancellation of the performance is in violation of the principles of natural justice and deserves to be set aside. In fact, the petitioners submitted that they wrote the roll numbers on their answer books out of anxiety.

10. Mr. Andhyarujina, learned Counsel appearing for the respondents, relied on a decision of the Supreme Court in *Karnataka Public Service Commission and others Vs. B.M. Vijaya Shankar and others*, , and submitted that the rules of natural justice have been held by the Supreme Court as not applicable to a case where the candidates appearing for an examination have violated the instructions and written their roll numbers when they were not supposed to do so. He further relied on the decision and submitted that the moment the authority conducting the examination finds that the candidate has written his roll number on the answer book contrary to the instructions in that regard, his performance at the examination must be cancelled. There is no reason to consider the explanation of the candidate and give reasons why his explanation is rejected.

11. We, however, find that there is a difference in the case before us and the case before the Supreme Court. Firstly, in the case before Their Lordships, the Public Service Commission which had held the examination did not impose any penalty on the candidates. Their examination was not cancelled nor were they debarred from taking any examination conducted by the Commission for that year or any year in future. Their performance at the entire examination was not cancelled. The only action taken by the Public Service Commission was that the answer books in which the roll number had been written inside were not evaluated. It is thus clear that no punishment was imposed on the candidate. That is not the situation here. The petitioners before us have been punished in that they have been found guilty of malpractice and their performance at the entire examination has been cancelled.

12. The other difference which deserves to be noted is that in the present case, the Board has Implicitly accepted that the principles of natural justice are applicable. It has on its own issued the show cause notice and called for explanation from the petitioners. We are informed by the learned Counsel appearing on behalf of the Board that the Board has laid down this procedure of issuing a show cause notice and calling for an explanation while dealing with such case.

13. We have, therefore, examined the proceedings before us to see if the Board has properly conducted the inquiry which it has purported to do. The averments in the petition that about three students were called into the room where the inquiry was conducted and the same has not been effectively denied. Taking the averments of the petitioners as correct, we do not think that in the circumstances the inquiry could be said to have been properly conducted. In fact, one of the petitioners in Writ Petition No. 1231 of 2001 has stated that the Inquiry Officer did not even have the answer book of Chemistry II or written explanation submitted earlier by the petitioner when the petitioner appeared

before it. This gives us a distinct impression that the Inquiry Officer did not conduct the inquiry properly. Indeed, this is reflected in the impugned orders which merely state that the petitioners' performance at the said examination is cancelled. We are of the view that the order ought to have indicated why the explanation as offered by the petitioners was unacceptable and given reasons, however brief, for the same.

14. This takes us to the contention on behalf of the respondent-Board that all that the Board needs to enquire into at such an enquiry is whether the student accepts that he has written his roll number in the answer book at the place where it was supposed to have been written. This means that any explanation which a student might have, however genuine, can be only ignored. We do not think that such an inquiry would be just and fair in all circumstances.

15. In fact, in two writ petitions disposed of by us by a separate order, viz. Writ Petition No. 1223 of 2001 and Writ Petition (Lodging) No. 1468 of 2001, the students who have also written their roll numbers in the answer books at places where they were not supposed to, the explanation was that they wrote their roll numbers at the instructions of the invigilator. Without applying the mind to the explanation, the Board cancelled the performance of the students at the examination. It is only while answering the challenge to the impugned cancellation that the respondent-Board stated before this Court that the Board decided to reconsider the order cancelling the performance of the students and has decided to withdraw the cancellation. In another instance, the learned Counsel for the Board pointed out that a student had written his roll number on every page of the answer book. The very next day, recalling his mistake, he approached the Board with his parent and the Board agreed to overlook the violation on being convinced that the mistake was genuine. The upshot is that it is possible that in a given case the student has a genuine explanation which needs to be considered fairly by the Board. We are, therefore, not inclined to accept the submission that the scope of the inquiry is only limited to seeing whether the student has himself written the roll number. We are of the view that it is necessary for the Board to consider the explanation of the students and the order imposing any punishment must contain reasons for rejecting the explanation. This, according to us, is more important in case of students of tender age who would find it difficult to accept the stigma that accompanies the punishment for using malpractice at the examination.

16. There is another feature of this case to which our attention has been drawn. The original rule prohibited the making of marks or symbol, the writing of one's own name and the roll number at a place where it is not necessary by which a candidate can be identified, if the same was done "for obtaining undue benefit." The words "for obtaining undue benefit" have been deleted from the rules, with the result that doing any of the prohibited things stated above, on answer book, has now been made punishable. This amendment was made after a decision of this Court in Writ Petition No. 1576 of 1999 dated 5.7.1999. Admittedly, the

amendment has not been given any publicity. In fact, the learned Counsel for the Board stated that the Board intends to display the instructions more prominently hereafter. We feel that the amendment which, according to the Board, is intended to make the rule stricter ought to have been given due publicity for the information of students desirous of appearing for the examination.

17. It appears to us that the petitioners have acted more out of over anxiety than out of dishonesty. The petitioner in Writ Petition No. 1231. of 2001 has felt that if for any reason the sheets of the answer book got separated, it would help if the roll number was written on the internal pages of the answer book. The petitioner in Writ Petition No. 1313 of 2001 also has stated that he wrote the roll number by way of abundant caution and that he maintained uniformity by writing the numbers throughout the examination. Having regard to the meritorious record of the candidates, we find that it is highly plausible that the petitioners acted out of over anxiety. In fact, it is not the case of the Board that it is possible to demonstrate that the petitioners could not have otherwise got the marks which has been awarded to them.

18. Having regard to the circumstances, we consider it appropriate in the interest of justice to set aside the orders cancelling the performance of the petitioners and allow these writ petitions.

19. The rule is made absolute in the aforesaid terms. There shall be no order as to costs.

20. Ms. Chavan appearing for the respondent Board seeks stay of the order. Application is rejected.

21. Respondent Board is directed to declare the results of the petitioners and issue mark lists to the petitioners forthwith.