

(2016) 03 GUJ CK 0175

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1309 of 2015 in Special Civil Application No. 11553 of 2015 With Civil Application No. 11650 of 2015 in Letters Patent Appeal No. 1309 of 2015.

Patel Forum Jitendrabhai - Appellant @HASH State of Gujarat and 3 Ors.

Date of Decision : 23-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 GLR 2713

Hon'ble Judges : R. Subhash Reddy, CJ. and Vipul M. Pancholi, J.

Bench : Division Bench

Advocate : Mr. AY Kogje, Advocate, for the Appellant; Ms. Manisha Luvkumar Shah, Government Pleader With Mr. Dm Devnani, Assistant Government Pleader, for the Respondent No. 1; Mr. AD Oza, Advocate, for the Respondent No. 2; Notice Served by D.S, for the Respondent

Final Decision : Allowed

Judgement

Mr. R. Subhash Reddy, CJ. - This Letters Patent Appeal is filed under Clause-15 of the Letters Patent by the petitioner in Special Civil Application No. 11553 of 2015, aggrieved by the order of the learned single Judge, dated 6th August 2015.

2. In the aforesaid Special Civil Application, the appellant-petitioner has challenged the validity of the order dated 22.6.2015 passed by the Gujarat Secondary and Higher Secondary Education Board. By way of punishment on the allegation of malpractice, the 2nd respondent-Board has cancelled the entire result of the 4th Semester examination which was held in the month of March, 2015, and debarred the appellant-petitioner from writing the examination up to March, 2017.

3. The 2nd respondent-Board conducted the examination of 4th Semester of 12th Standard, Science Stream, in the month of March, 2015. The appellant-petitioner appeared in the said examination with Seat No. B 202133 from Jay Somnath School, Maninagar East, Ahmedabad. Prior to theory examination conducted in the month of March, 2015, the appellant appeared in the practical

examination of Computer, Chemistry, Physics and Biology subjects in the months of January and February, 2015. The appellant appeared in the 4th Semester Biology examination on 20th March, 2015. Even thereafter, she has appeared in the examination of other subjects of the same semester. The 2nd respondent-Board issued show cause notice dated 15.6.2015, by which the petitioner was called upon to remain present before the examination committee on the allegation that the father of the appellant-petitioner, Shri Jitubhai Narshibhai Patel was arrested in connection with C.R. No. 38/2015 registered with Khokhara Police Station for the offence punishable under Sections 409, 120B, 201, 114 and 188 of the Indian Penal Code read with Section 66A of the Information and Technology Act. In the aforesaid First Information Report, it was alleged that a group of some persons conspired to leak the question paper of Biology subject and the father of the appellant-petitioner obtained such leaked paper so as to extend the benefit of the same to the petitioner who was appearing in the examination of Biology subject. The appellant-petitioner appeared before the examination committee and deposed denying the accusation made against her and mainly it was her case that she was not in contact with her father on that day, and as such, there was no question of her involvement or to connect her with the aforesaid C.R. No. 38/2015 registered with Khokhara Police Station.

4. In spite of such evidence of the appellant, the 2nd respondent passed the order impugned in the Special Civil Application, which is communicated to her by letter dated 22.6.2015, thereby cancelling the result of the examination of the appellant and debarring her from writing the examination up to March, 2017. When such decision and order passed by the 2nd respondent is challenged by the appellant-petitioner in the Special Civil Application No. 11553 of 2015, even the learned single Judge, by recording a finding that it cannot be believed that such irregularity committed was not for the benefit of the petitioner, and by further holding that there is nothing on record except the case of the petitioner to substitute the decision of the Board, dismissed the petition by order dated 6th August, 2015. Thus, aggrieved by the said order, the petitioner in Special Civil Application No. 11553 of 2015 is before this Court by way of the present Letters Patent Appeal by invoking Clause-15 of the Letters Patent.

5. Heard Shri A.Y. Kogje, learned counsel appearing on behalf of the appellant, Ms. Manisha L. Shah, learned Government Pleader appearing with Mr. D.M. Devnani, learned Assistant Government Pleader on behalf of respondent No. 1 and Mr. A.D. Oza, learned counsel appearing on behalf of the 2nd respondent.

6. It is contended by learned counsel Shri Kogje that the 2nd respondent-Board has passed the order impugned in the Special Civil Application on presumptions and surmises and in the absence of any acceptable evidence on record. It is contended that in the absence of any material to show that the appellant is the beneficiary of such leakage of question paper of Biology, there is no reason either to cancel the result of the examination of the appellant or to debar her from appearing in the examination up to March, 2017. It is contended that the

findings recorded are based on no evidence, such findings are perverse and the same are also for judicial review, in spite of the fact that the matter relates to an academic body. It is the case of the appellant that the 2nd respondent-Board lost sight of the crucial aspect so as to know whether there is acceptable material on record to connect the appellant-petitioner with the episode of leakage of question paper. It is further contended that even assuming that the father of the appellant-petitioner obtained the leaked question paper, unless there is material to show that the same is leaked to the appellant before she entered the examination hall, there is no reason to cancel the result of the examination. It is also contended that the authorities have proceeded in the matter merely on the basis that there is allegation of serious nature about leakage of question paper and in that connection, the First Information Report is registered against the father of the appellant. But at the same time, the 2nd respondent-Board ought to have seen that based on no material, if such punishment is imposed on the appellant, it will spoil the career of the appellant. In support of his submissions, learned counsel for the appellant placed reliance on the judgment of a Division Bench of this Court in the case of Siddharth Mohanlal Sharma v. South Gujarat University, reported in 1982 G.L.H. 648 as well as the judgment of the Hon'ble Supreme Court in the case of Mathura Prasad v. Union of India and Others, reported in 2007 (3) GLR 2042 (SC).

7. On the other hand, Mr. A.D. Oza, learned counsel appearing on behalf of the 2nd respondent-Board argued that the appellant is not entitled to any relief in this appeal by seeking judicial review of the decision taken by the academic body of the 2nd respondent-Board. It is contended that as much as the appellant is the beneficiary of the leaked question paper in which connection, First Information Report, being C.R. No. 38 of 2015 is registered with Khokhara Police Station wherein the father of the appellant is one of the accused, as such it cannot be said that there is no material to record a finding against the appellant for cancellation of the result of the examination in question and to debar her from appearing in the examination. It is the case of the 2nd respondent that the scope of judicial review is very limited in matters relating to academic institutions, and as such, there are no merits in this appeal so as to interfere with the order of the learned single Judge. Thus, the learned counsel for the 2nd respondent has prayed for dismissal of the appeal. In support of the case of the 2nd respondent-Board, learned counsel has placed reliance upon the judgment of a Division Bench of this Court in the case of Thummar Vishal G. v. State of Gujarat through Secretary, reported in 2014 (5) GLR 4533.

8. Having heard the learned counsel for the parties, we have closely perused the material on record, having regard to the fact that career of a young student is involved.

9. From the material on record, it is clear that on the allegation of leakage of question paper by a group of persons conspiring to leak the question paper, First Information Report, being C.R. No. 38 of 2015 is registered with Khokhara Police

Station for the offence punishable under Sections 409, 120B, 201, 114 and 188 of the Indian Penal Code read with Section 66A of the Information and Technology Act. It is the allegation of the 2nd respondent-Board that during the course of the investigation of the persons who are involved in the episode of leakage of question paper, it has come to light that the father of the appellant has obtained such question paper and he is also shown as one of the accused in the said offence.

10. When proceedings are initiated against the appellant as per the academic regulations, namely, Gujarat Secondary and Higher Secondary Certificate Examination Regulations, 2005, proposing to cancel the result of the examination of the appellant and to debar her, she was called upon to appear before the examination committee. The appellant appeared before the committee, denying the receipt of the question paper and in fact, in her statement, she has stated that she had come to the examination hall in advance along with her mother. Even in the representation dated 15.6.2015, she has categorically denied the allegation made against her and in spite of such specific denial, except recording vague finding stating that the student-appellant and her father have committed serious type of malpractice for getting more marks in the paper of Biology, there is no other finding based on any material to show that the appellant is the beneficiary of such leaked question paper. It appears from the perusal of the impugned order in the Special Civil Application and other material placed on record that the authorities have focused only on the issue of leakage of question paper which is a serious matter and the father of the appellant is made accused in the crime. It is also clear from the material on record that the father of the appellant is made accused in the crime based on the statements alleged to have been made by other witnesses during the course of the investigation. It is true that Gujarat Secondary and Higher Secondary Certificate Examination Regulations, 2005 empower the authority for cancelling the result of the examination and also debar a student, but whether the finding recorded by the 2nd respondent in such decision is just and proper, is a matter which is required to be considered having regard to the facts of each case. It is equally true that in matters relating to academic institutions, it is fairly well-settled that this Court, in exercise of power under Article 226 of the Constitution of India cannot substitute its views with the academic bodies. But at the same time, when the finding recorded by the academic body is based on no evidence, we are of the considered view that this Court can invoke power to consider the claims of such affected parties by way of judicial review. We have also had the benefit of the judgment of the learned single Judge. Even the learned single Judge, in spite of the specific case of the petitioner that there is no material to connect the petitioner with the episode of leakage of question paper so as to take action against her, has proceeded merely on the ground that the Board has given an opportunity of being heard to the petitioner, and thereafter has passed the impugned order. There is no finding recorded by the learned single Judge on the specific plea of the appellant-petitioner that there is no material to connect the

petitioner with the allegation of leakage of question paper. The learned single Judge also rejected the petition filed by the petitioner which was filed mainly on the ground that the irregularity committed by the father of the petitioner was not for the benefit of the petitioner. The learned single Judge has rejected the petition by observing that it cannot be believed that such irregularity committed was not for the benefit of the petitioner.

11. In the judgment relied on by the learned counsel for the petitioner in the case of Siddharth Mohanlal Sharma (supra), a Division Bench of this Court, while considering the issue, namely, whether University be considered as "State" within the meaning of Article 12 of the Constitution of India, has clearly held that University is a "State" within the meaning of Article 12 of the Constitution. Thus, the actions of the University must be right, just, fair and not arbitrary, fanciful or oppressive. It is apt to refer to paragraphs-18, 19 and 20 of the aforesaid judgment, which read as under :-

"18. The University is an authority within the meaning of Article 12. It is subject to the injunction of Article 14, which strikes at arbitrariness in State action and ensures fairness and equality of treatment. The actions of the University, therefore, must be "right and just and fair" and not arbitrary, fanciful or oppressive (See *Maneka Gandhi v. Union of India*, AIR 1978 SC 587). The principle of reasonableness pervades Article 14 like a brooding omnipresence and any State action to be valid must answer the test of reasonableness.

19. Natural justice likewise is sanctified constitutionally in the great equalising principle enunciated in Article 14 and, therefore, the executive action must meet the requirements of rules of natural justice. Natural justice, it has been said, is only "fair play in action". When therefore, a university authority in the exercise of its disciplinary power, holds proceedings for infliction of penalty for misconduct upon one of its errant alumni, it is its duty to act fairly in matters substantive and procedural. Certiorari will issue to quash those proceedings if it is found that the authority acted unreasonably or unfairly in the circumstances of the case.

20. It is true that findings of fact recorded in the course of such an inquiry, unless they are collateral or jurisdictional, are exempt from judicial review and that the Court exercising writ jurisdiction cannot sit in appeal over the ultimate decision based on such findings and review it on merits. However, there are two well-known exceptions to the said rule. First, the case must not be one where there is "no evidence" to support the findings. Secondly, the ultimate decision based on such findings must not be perverse or unreasonable. These two concepts have affinity with each other ; indeed, the "no evidence" principle clearly has something in common with the principle that perverse or unreasonable action is unauthorised and ultra vires. As pointed out by Lord Radcliffe in *Edward (Inspector of Taxes, Bairstow)* (1956) Appeal Cases, 14 at page 36 "I do not think that it much matters whether this state of affairs is described as one in which there is no evidence to support the determination or as one in which the evidence is inconsistent with and contradictory of the

determination, or as one in which the rule and only reasonable conclusion contradicts the determination. Rightly understood, each phrase propounds the same test," in each of these cases, according to Lord Radcliffe, there would be an error in point of law requiring the court's intervention."

Thus, in the aforesaid judgment, the Division Bench of this Court has held that while exercising writ jurisdiction, this Court cannot sit in appeal over the ultimate decision based on such findings and review its own merits. At the same time, it is held that there are two well-known exceptions to the said rule ; firstly, the case must not be one where there is "no evidence" to support the findings, and secondly, the ultimate decision based on such findings must not be perverse or unreasonable. We are of the view that the said view taken by Division Bench of this Court will fully support the case of the appellant as we are of the view that the findings recorded against the appellant-petitioner are based on no evidence and thus, the findings recorded are perverse and unreasonable also.

Hon"ble the Supreme Court, in the case of Mathura Prasad (supra) has considered the scope of judicial review and observed in para-19 as under :

"19. When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review."

Thus, as per the above decision rendered by the Hon"ble Supreme Court, if the order is passed without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may also attract the principle of judicial review. Thus, merely because during the course of investigation it has come to light that the appellant's father was supplied the question paper, that by itself is no ground to take the matter against the appellant. During the course of hearing, we have also perused the answer-scripts of the appellant. The examination is in two parts ; one consisting of Multiple Choice Questions of 50 marks on OMR sheet. On instructions, it is submitted that in the said objective test, out of 50 marks, the appellant secured only 41 marks and the question paper is of Multiple Choice Questions, when it is alleged that the appellant is beneficiary of such leaked question paper, there is no reason for obtaining only 41 marks out of 50 marks. At the same time, in other remaining 50 marks paper also, she has secured 45 marks. We cannot strictly go by such percentage, but in a matter of this nature, to accept the probability, this Court can certainly look into such material placed before this Court. Even the other material placed on record by the petitioner, namely, the mark-sheet of S.S.C. onwards also show that the appellant is fairly a meritorious student. In that view of the matter, we are of the view that the order cancelling the examination result of the appellant and the order debarring the appellant from appearing in the

examination up to March, 2017 are fit to be set aside. Learned counsel for the 2nd respondent has sought to rely on some further material collected during the course of investigation, but the same cannot be looked into at this stage for the reason that such material is not relied on by the 2nd respondent-Board while passing the impugned order in the Special Civil Application. It is fairly well-settled that the order impugned shall stand on its own when the matter is under scrutiny by the legal forums. But the same cannot be reinforced by way of averments made in the affidavit filed before this Court. In the judgment of the Hon"ble Supreme Court in the case of Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and others, reported in AIR 1976 SC 891, the Hon"ble Supreme Court has held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds later brought out. In view of the above judgment, such argument of the 2nd respondent also cannot be accepted. The judgment relied on by learned counsel for the 2nd respondent in the case of Thummar Vishal G. (supra) also would not render any assistance in support of the case of the 2nd respondent-Board. Whether the findings are based on any material or not is a matter which is required to be examined in each case. We are conscious of the fact that the matter relates to an academic body. At the same time, to strike balance if it has two issues, namely, decision is taken by the academic body of Higher Secondary Board on one hand and where career of a young student is involved on the other, we are of the view that in the absence of any material in support of the findings recorded in the order, this is a fit case for interference by setting aside the order impugned in the Special Civil Application No. 11553 of 2015 and also the order of the learned single Judge.

12. In view of the aforesaid reasons, this Letters Patent Appeal is allowed. The order passed by the learned single Judge in Special Civil Application No. 11553 of 2015 dated 6th August, 2015 is set aside. Consequently, Special Civil Application No. 11553 of 2015 stands allowed as prayed for in terms of para-8(A) of the petition.

13. Since the main Letters Patent Appeal itself is allowed, the Civil Application No. 11650 of 2015 stands disposed of. No order as to costs.

Further Order :

After the order is pronounced, the learned counsel for the respondent No. 2 makes a request to stay the implementation of the order for some time.

As the appellant has already lost precious time, we do not find any merit in the submission advanced. The request is rejected.