
(2001) 07 BOM CK 0117

In the Bombay High Court

Case No : Writ Petition No. 1993 of 2000

Prafull Moreshwar Wagh

APPELLANT

Vs

Amravati Divisional Secondary and Higher Secondary
Education Board, Amravati and Others

RESPONDENT

Date of Decision : 05-07-2001

Acts Referred:

Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 —
Regulation 88, 88(1), 93(8)

Citation : (2001) 4 ALLMR 9 : (2001) 4 BomCR 312 : (2001) 4 BOMLR 925 :
(2001) 4 MhLj 346

Hon'ble Judges : R.M. Lodha, J;D.D. Sinha, J

Bench : Division Bench

Advocate : V.A. Dhabe, for the Appellant; Anand Parchure, V.P. Palpalia and N.S. Khubalkar, Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R. M. Lodha, J.—Heard learned counsel for the parties.

2. The petitioner was pursuing his studies of XIIth Standard (Science) in S. F. L. High School and Junior College in the academic year 1999-2000. During the academic session from June, 1999 to 15.10.1999, there were 94 working days and the petitioner attended on 78 working days while for the academic session from 16.10.1999 to 5.2.2000, there were 75 working days, but the petitioner only attended classes on 32 working days. Thus, for the first session from June, 1999 to 15.10.1999, the petitioner had attended 83% of classes while for the second session, the petitioner had attended 42.6% of classes. On 7.2.2000, the Principal of the S. F. L. High School and Junior College sent a communication to the petitioner's father that petitioner had remained absent for longer period than permissible and, therefore, he would not be entitled to appear in the examination being held at the end of February, 2000. On 10.2.2000, the principal of the concerned High School and Junior College sent a communication to the

respondent No. 1 that since petitioner had not attended requisite number of classes, his case is not recommended for admission card. It appears that thereafter the petitioner produced certain medical certificates before concerned Principal, who acting upon that, sent a communication to the first respondent on 14.2.2000 praying for condonation of absence in the light of explanation given by the petitioner for attending only 42.6% of the classes and recommending petitioner's case for admission to H.S.C. examination to be held in the last week of February, 2000. At the same time, the Principal of the concerned High School and Junior College provided admission card to the petitioner for appearing in H.S.C. examination to be held at the end of month of February, 2000. Pursuant thereto, the petitioner appeared in the examination of H.S.C. However, first respondent declared petitioner as "no candidate" and consequently did not declare petitioner's result. Aggrieved by that the present writ petition has been filed.

3. Under the Maharashtra Secondary and Higher Secondary .Education Boards Act, 1965, the Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 (for short, "Regulations of 1977") have been enacted. Regulation 88, which is relevant for our purpose, provides for eligibility of a regular candidate, according to which, a candidate attending the second year of Junior College Classes is eligible for appearing for H.S.C. examination on fulfilment of the conditions mentioned in Clause I(a) and (b) of the said Regulation. Regulation 88, to the extent it is relevant, reads thus :--

"88. Eligibility of Regular Candidates.-- A candidate attending the second year of Junior College class, shall be eligible to appear for the Higher Secondary Certificate examination to be held at the end of the second year of Junior college on fulfilling the following conditions :--

(I)(a) In the case of March or April Examination, he should have attended the Final Standard of one or more recognised Junior Colleges for not less than 75 per cent of the working days separately in two different parts, viz. in the first part from the opening day of the academic year to the 15th of October and in the second part, i.e. from 16th of October to the 5th of February next following:

Provided that, a candidate who does not fulfil, the requirement of the minimum attendance of 75 per cent, separately as stated above, and whose deficiency is not condoned and thus is not admitted to the examination or whose very application for admission to the examination is not forwarded by the Head of the Junior College on account of likely deficiency in attendance of whose application was withdrawn under Regulation 93(8) shall make up the deficiency in attendance either :--

A. During the first part of the next academic year, if he intends to appear for the examination in the following October or November.

OR

B. During the first or second or both parts of the next academic year, if he intends to appear at the examination in the following March or April.

(b) The Divisional Chairman, may for special reasons or circumstances beyond the control of the candidate as certified by the Head of the Institution, or suo motu, condone a deficiency in the percentage of attendance prescribed under clause (a) above, upto 15 per cent. The Divisional Chairman may on the merit of the case condone such deficiency either in the Part 1 or in Part II or in both the parts separately :

Provided that, the Divisional Chairman on recommendation of the Head of the Junior College concerned may condone deficiency in attendance beyond 15 per cent, in respect of a student who represents India or Maharashtra State in any international, National or Inter-State Sports or games held in India or abroad to the extent the student is required to remain absent from the Junior College for such participation :

Provided further that, in the case of a candidate who is admitted late in a recognised Junior College on account of the transfer of his guardian from other States, the Divisional Chairman on examining the merits of each case, may condone deficiency in attendance beyond 15 per cent after satisfying himself that candidates' late admission was on genuine ground. If such a candidate has attended Junior College for not less than 75 per cent of the working days counted from the date of his actual admission in Junior College :

Provided also that, the Chairman, State Board on recommendation of the Chairman of the concerned Divisional Board and the Head of the Junior College concerned, may condone the deficiency in attendance beyond 15% in respect of a student who could not fulfil the requirement of minimum attendance of 75% either in the first term or the second term or in both terms, for any of the following reasons, namely :

- (a) prolonged illness of the candidate.
- (b) sudden demise of parents of the candidate.
- (c) unforeseen reasons which compel the candidate to go outstation or abroad for a long period,
- (d) natural calamities, and
- (e) any other reasons which are genuine in their nature.

Attendance of at least 50% in either of the terms separately or in exceptional cases in both terms taken together shall be necessary for such students and attendance less than 50% in both the terms taken together shall not be condoned under any circumstances.

In all such cases, application of a candidate accompanied by documentary evidence and recommendations of the Head of the Junior College shall be

submitted to the Chairman, State Board through the Chairman of the concerned Division Board. The Chairman, State Board shall go through each case and verify the genuineness of the reasons for the shortfall in attendance on the basis of the documentary evidence submitted by the Divisional Chairman, and decide each case on its own merits. The decision given by the Chairman, State Board shall be final. No application received from the candidate directly by the Chairman of the Divisional Board or State Board shall be entertained."

4. It would be seen from the aforesaid Regulation that attendance in the final standard of one of the recognised Junior Colleges for not less than 75% of the working days spread in two parts is one of the conditions of eligibility for appearing in XIIth Standard examination conducted by the respondent No. 1 Board. The Divisional Chairman is empowered to condone deficiency in the percentage of attendance upto 15% for a special medical reasons or circumstances beyond the control of candidate. The State Chairman is further empowered to condone the deficiency in the percentage of attendance upto 10% more for the special reasons, namely :

- (a) prolonged illness of the candidate,
- (b) sudden demise of parents of the candidate,
- (c) unforeseen reasons which compel the candidate to go outstation or abroad for a long period.
- (d) natural calamities, and
- (e) any other reasons which are genuine in their nature.

It would be seen that Divisional Chairman is empowered to condone the deficiency in the percentage of attendance upto 15% while State Chairman has further jurisdiction to condone the deficiency above 15% upto 25% for the reasons stated in the amended proviso. No one has jurisdiction to condone the deficiency above 25% except under the circumstances and to the extent enumerated in proviso to clause I(b), which relates to a student, who represents the country or the State in any national, international or inter State sports or games. The learned counsel for the petitioner, however, relying upon the judgment of this Court in Arshdeep d/o Gurudeo Singh Puri v. Maharashtra State Board of Secondary and Higher Secondary Education, Nagpur and Ors., submitted, that once the petitioner appeared for practical examination of XIIth Standard on the basis of admission card issued by the Board, it was not open to the Board to declare the petitioner "no candidate" and further not to declare his result. According to the learned counsel, principle of equitable estoppel operates, against respondent No. 1 Board and, therefore, action of the first respondent is bad in law.

5. Insofar as ambit, scope and nature of Regulation 88 referred to hereinbefore prior to amendment is concerned, the Division Bench of this Court in Arshdeep's case (cited supra) held thus :--

"6. The submission though attractive in the first flush, is fallacious it proceeds upon the wrong assumption that holding the examination is the only object of Secondary or Higher Secondary education and equipping the student with ability to pass the examination is the only object of giving education. Examination is not an end in itself, but only a means to achieve the real object of education, which is to help the all round development of a personality of a student in formative years and consequently, as George Palmer has very succinctly put "to be able to do what one has not done before". Bookish knowledge is not all. There are enumerable advantages of regularly attending the classes. Attendance aims at instilling into the alumni sense of discipline, brotherhood and regard, by being together with fellow students under the guidance and supervision of the teachers. Indeed close and intimate personal association between the teacher and the taught has always been recognised as an ideal form of education since years in our country. Extra-curricular activities like debates, sports, symposiums, sight seeing, etc. are the regular features of college activities and they have as important a place in education as curricular activity and syllabus, if not more. A student is deprived of all these advantages by not attending the College. We, therefore, do not see any unreasonableness or arbitrariness in the policy decision in making attendance mandatory for a regular student and deficiency below certain limit a disqualification to appear for the examination -- Irrespective of the reasons for the said deficiency. A student no doubt loses some time, but it is not only in the interest of education, but also in his own Interest. In the ultimate analysis, he is the gainer. Some limit has to be put. It is put at 60% in the Regulations. Such limit also reduces the chances of exercise of discretion arbitrarily.

7. Then, why exception in the case of a sportsman, is the poser made on behalf of the petitioner. Now, sports is a part and parcel of education. Only higher grade, sportsmen who spend time in participation of the games held at a particular level, are given the benefit under proviso to Rule 88(1)(b). Benefit permitted to be given is restricted only to the extent of time so spent and that too, on recommendation of the Head of the College. This exception has a nexus to the object of the Regulations and is not unreasonable. Moreover, these are all matters which essentially fall within the realm of policy in which the Courts are not normally expected to trespass. Thus, Clause 88(1)(a) and (b) has a clear nexus with the object sought to be achieved by the Regulations and the Act under which they are made, and is perfectly valid and Constitutional."

6. The view taken by us, as Indicated above, that the Divisional Chairman is empowered to condone deficiency of attendance upto 15% for the reasons stated and State Chairman has further jurisdiction to condone deficiency above 15% upto 25% and that no one has jurisdiction to condone deficiency beyond that under the circumstances and to the extent enumerated in proviso to clause 1(b), is fully supported by the view taken by the Division Bench in Arshdeep's case. As regards invocation of principle of equitable estoppel by the Division Bench in Arshdeep's case, it was based on the following facts :

Ku. Arshdeep was prosecuting her studies as a regular student of XIIth class in St. Joseph's Convent Junior College, Nagpur. She submitted an application form for appearing for that examination to the Divisional Board through the Principal of the Junior College and pursuant to the said admission card, the petitioner appeared for practical examinations held by the Board. Theory examinations were to commence thereafter. At that time, father of the petitioner was informed by the Principal of the Junior College based on telegraphic communication from the Board that Arshdeep's application for appearing for the examination was rejected due to shortage of attendance in the class for the second part of the session. The petition was filed on 14.3.1990 and by an ad interim order. Arshdeep was allowed to appear for theory papers. In the background of these facts, this Court held that when the student appeared for the practical examinations of XIIth Standard on the basis of admission card issued by the Board and the Board belatedly rejected student's application for admission to the examination on the ground of short attendance, principle of equitable estoppel operated against the Board. Adverting to the facts in the present case, it would be seen that much before practical and theory examinations started, on 7.2.2000 the Principal of the concerned High School and Junior College where petitioner was studying, Informed his father that petitioner was not entitled to appear in the examination to be conducted by the end of February, 2000 because of his absence for the period more than permissible under the Regulation. Not only that, by communication dated 10.2.2000, the Principal of the said High School and Junior College also intimated the first respondent Board that petitioner's case cannot be recommended since he did not fulfil eligibility. It was only thereafter that the petitioner produced certain medical certificates and acting upon that, the respondent No. 2 provided admission card to the petitioner and also recommended petitioner's case for condonation of absence to the respondent No. 1. The facts operating here cannot be said to stop the first respondent from declaring the petitioner as no candidate and for not declaring his results since he was not eligible under Regulation 88 having not attended the second session for the requisite number of classes. Even if we give all benefits to the petitioner for condonation of absence upto 50%, the power which the State Chairman possess, the petitioner cannot get benefit since he only attended 42.6% of classes in the second session from 16.10.1999 to 5.2.2000. Besides this, it be noted that vide order dated 6.7.2000, this Court directed the petitioner to file affidavits of Dr. O. M. Chandak and Dr. Prakash Rathi in support of medical certificates said to have been issued by them along with medical case papers, bills, receipts of medicines advised and consumed by the petitioner and also original record of treatment. Pursuant to the order dated 6.7.2000, learned counsel for the petitioner prayed for time for production of the aforesaid documents as required by this Court, but not only that the said documents have not been produced within the time granted by this Court till date, neither affidavits of Dr. O. M. Chandak and Dr. Prakash Rathi have been filed nor the medical case papers, bills, receipts of medicines advised and original record of treatment have been produced. Instead, petitioner's father has filed an affidavit

on 17.7.2000, which cannot be accepted. Failure to file affidavits of Dr. O. M. Chandak and Dr. Prakash Rathi in support of medical certificates said to have been issued by them and relevant treatment and medical case papers creates suspicion and cloud about petitioners' stand that during the relevant period, he was ill and due to that, he was unable to attend the classes.

7. Learned counsel for the petitioner also relied upon judgment of Division Bench of this Court in Kalpesh Suhas Pawar, etc. v. Maharashtra State Board of Secondary and Higher Secondary Education and Ors. In our view, the said judgment is of no help to the petitioner. In that case, the candidates had taken a specific plea that despite attending classes, they were not marked present because they had not obliged concerned teachers by attending their coaching classes. In the light of the stand set up by the candidates, Enquiry Officer was appointed, who did not consider the plea of candidates and did not report any clear finding as to correctness or otherwise of the allegations made by the candidates and accordingly cancellation of admission was held to be improper.

8. Despite our all sympathies with the petitioner, we find that the petitioner's case being hopeless, he cannot be helped. Mercy to some extent may be invoked while administering justice, but justice cannot be tampered with all mercy. Mercy is supplemental to justice, but cannot supplant the justice. In the present case, with all latitude and opportunity given to the petitioner, on the face of the fact that he has only attended 42.6% of the classes in the second session from 16.10.1999 to 5.10.2000, the said absence is not condonable under Regulations and law.

9. The writ petition accordingly has no merit and is dismissed. Rule is discharged. No costs.