

(1988) 08 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 1340 of 1988

Rajesh Govind Virkar and Others

APPELLANT

Vs

S.K. Mahajan and Others

RESPONDENT

Date of Decision : 11-08-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 4 BomCR 295

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Advocate : E. Kotwal, instructed by Rustumji Ginwala and Co, for the Appellant; V.N. Kanade, for respondent No. 1, V.V. Pai, for respondent No. 1A, Liladhar Vyas, for respondent Nos. 2, 2A and 3, P.R. Ashar and B.V. Bhagat for respondent Nos. 4 to 17, for the Respondent

Judgement

H. Suresh, J.—For the sins of the management of an educational institution, should the students be made to suffer ? That is the question which is highlighted in this writ petition.

2. The petitioners and respondents Nos. 4 to 17 are the students who joined a polytechnic run by respondents Nos. 1 and 1-A on the strength of certain representation contained in the prospectus issued for the year 1987-88. They also rely on an order passed by this Court in an earlier writ petition filed by the respondents Nos. 1 and 1-A.

3. Respondents Nos. 1 and 7-A, husband and wife, are connected with an institution known as Engineering Educational Trust. It appears that the said trust was established in the year 1969 and it is a registered public trust. The said trust started a polytechnic at Dombivli for diploma course in engineering education and sought Government recognition. The Government gave recognition to the institution initially by an order dated June 15, 1984 and subsequently by another order dated July 3, 1985. Petitioners Nos. 1, 2, 3, 5, 7 and 13 and respondents Nos. 5, 9, 11, 12, 13, 14, 15 and 16 applied for and secured admission for the

first year of a technical course in engineering on or before June 24, 1987. At that time they had relied on the prospectus issued by the institution which in terms referred to the permission granted by the Director of Technical Education, Maharashtra.

4. On June 24, 1987, the Government of Maharashtra issued a letter addressed to the institution stating that without the written permission of the office of the Directorate of Technical Education, they should not admit the students for the academic year 1987-88 in the polytechnic run by the said trust. It further stated that if they admit the students for the year 1987-88 without obtaining written permission of the office it would be the sole responsibility of the managing trustee, and the students would not get permission to appear for the examination conducted by the Board of Technical Examinations. The students who got the admission were not aware of this communication at all. If one analyses this letter, it does not clearly say that the recognition was cancelled. It only required that before the students were admitted, the managing trustee or the head of the institution had to take a prior permission of the Directorate of Technical Education, Maharashtra State.

5. On the receipt of the said letter, respondents Nos. 1 and 1-A stopped admitting further students. Thereafter respondent No. 1-A, as the Managing trustee was advised to file a writ petition in this High Court being W.P. No. 4295 of 1987 for cancellation of the said order and to permit the institution to run their polytechnic during the current academic year 1987-88. On September 10, 1987 the managing trustee obtained an ad interim injunction which restrained the Directorate of Technical Education, from preventing the managing trustee from enrolling the students in their polytechnic for the year 1987-88. By virtue of this order, the respondents Nos. 1 and 1-A admitted petitioners Nos. 4, 6, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19 and 20 and respondents Nos. 4, 6, 7, 8, 10 and 17.

6. However, when the writ petition came up for admission, the petition was rejected by an order dated October 5, 1987. It is unfortunate that when the petition came to be dismissed, the parties did not think of the fate of the students who were admitted at that time. If at that point of time suitable directions had been obtained and/or suitable arrangements had been thought of for their further education, perhaps, the present petition and the tension, the students had to undergo, could have been avoided.

7. After the dismissal of the said writ petition, the students of course could not think of getting admission anywhere else, as perhaps it was too late to seek such permission. Even otherwise, having regard to the paucity of the seats available for the students for technical education in the State of Maharashtra and elsewhere, even if they had desired, without the Government actively assisting them, it was not possible for them to get admission to any other institution. In these circumstances, respondents Nos. 1 and 1-A who admitted these students to their institution and having received the fees for admitting them, though that they could with their education with whatever facilities they had in their

institution. I may also mention that by the time this recognition was cancelled this institution had their students in the third year course and if that is so, it must be presumed that they had sufficient facilities available for the students for the first year course. It appears that in the meanwhile respondents Nos. 1 and 1-A made representation to the Government to reconsider their decision but of no avail. After the students finished their course and the time came up for filing up the forms for the examination, representations were again made to the Government to send the forms. In fact on January 24, 1988 the Principal of this institution wrote a letter to the Secretary of the Board of Technical Examination, requesting him to enrol the students who have been admitted as stated above. In all thirty four forms duly filled in, with the receipt books, counter-foils etc, were sent and it appears that two further forms were to be sent thereafter. The fees collected for the examination were also forwarded. However, the department would not accept these forms. As a result of that while the students waited for some response from the Government, the time for the examination was coming near. The students naturally felt that they would not be allowed to appear for the examination and therefore, they approached this Court by filing this writ petition on or about April 27, 1988. The learned Single Judge before whom the writ petition appeared for admission rejected the petition as he found no merit in the petition. Against the said order the students preferred an appeal and moved the Appeal Bench for an ad interim order. On May 11, 1988 the Division Bench on this High Court passed an order permitting the students to appear for the examination which was to commence on May 17, 1988 and the respondents were directed to issue the necessary forms etc. enabling the students to appear for the examination. However, the Division Bench directed that the results be not declared until further directions from this Court. The appeal was placed on board for admission on June 13, 1988. The appeal was thereafter allowed and the petition admitted on June 14, 1988.

8. In support of the petition Mr. Kotwal submitted that the students have plainly acted on the representation as contained in the prospectus. He further submitted that thereafter they were further protected by the order passed on September 10, 1987 in the writ petition filed by the management, which order was in force till October 5, 1987. He also pointed out that all these students were admitted prior to October 5, 1987 and as far as the students are concerned there is no fault on their part. He further submitted that at the time of their admission to their institution, they were not aware of the fact that the recognition had been cancelled by the Government. It is true that there was a news item of a very general nature in one of the local papers on or about June 18, 1987, cautioning the prospective students to be wary about recognition of such institutions. In any case, thereafter this Court itself passed an order on September 10, 1987 which enabled the management to enroll further students. It is true that thereafter the writ petition was rejected. There was some news item in the press to the effect that this petition was dismissed but again as I pointed out above, there was no direct communication to the student to the effect that the recognition of the

college had been cancelled and that they were not eligible for appearing at the examination as such. Assuming there was any communication, what could the students have done? They were apparently not in a position to get admission anywhere else. They had already paid their fees for the whole year, perhaps, some amount in addition too. They therefore, continued and completed their term. The only question is whether they could be allowed to appear for the examination or not. It is nobody's case that they had not kept their terms. The desire to appear for an examination conducted by the Board of Technical Education and not any private test in private institution. If they offer themselves for an objective assessment in the Board's public examination, I cannot understand how they can be denied such a chance.

9. Mr. Vyas who appeared for the Government, submitted that this would ultimately encourage the institutions which have been derecognised. He submitted that even though the students might suffer, that should not matter, inasmuch as ultimately the institutions which are derecognised should not be allowed to take advantage of their own wrong.

10. While I have no sympathy whatsoever for an institution of this type which has enrolled the students while there was an impending threat of their recognition being cancelled, the question is whether the students should be made to suffer at all ? I find no fault on the part of the students on their parents. The Court cannot be oblivious to the fact that by and large, the State has lagged far behind in providing for sufficient number of efficient educational institutions, technical or otherwise, for a very large community of students. It is a pathetic sight that, as results of public examinations are declared, students seeking admission for further education have to go knocking at the doors of education, from institution to institution, and very often to far off places, with no proper facility for bed and board. While parents from affluent class can afford to send their children to degree colleges and costly institutions, it is the poor and the middle class parents who seek to send their children to such polytechnics, whether the facilities therein are adequate or not. Such is the law of life and the parameters of justice must per force come to the aid of the rule of life. Whenever a student finds the door of education closed and he comes to the portals of this Court under Article 226 of the Constitution, it should be a reminder for the Government having failed for in its triple aspirations contained in Articles 41, 45 and 46 of the Constitution. I, therefore, told Mr. Vyas that the Honourable Education Minister should intervene and give these students a chance. But as is wont, the Government thinks that justice is the exclusive concern of the Courts. Hence I can only say, let justice be done to these students.

11. Of course, it was sought to be pointed out that the students are not eligible because according to Mr. Khare, Secretary of the Board of Technical Examinations, these students have not completed their practicals and sessionals property. Initially, the Chairman of the Board of Technical Educations had not been made a party. But on consideration of the rules for admission to

examination, passing etc., approved in the form of Ordinances and Regulations, I felt, it is necessary that the Chairman of the will have to be made a party. I gave liberty to the petitioners to amend the petition and further gave liberty to the Chairman or its Secretary to file an additional affidavit. That is how, today, the Secretary. Mr. Khare, filed an additional affidavit. In this additional affidavit he has relied on one or two additional facts. They have relied on a report given by the Principal of the Government Polytechnic, Bombay, who is said to have assessed the practicals and term-work done by these students. Along with the affidavit a document is also annexed which indicates that the students are not eligible, as either the students have done incomplete work or the students have not submitted their journals or reports of practical work done by them. I thought that the Government was relying on this for the purpose of showing that it was open to the Board of Technical Education to check these journals and reports prior to the students appearing for the examination and for purpose of considering whether on such incomplete journals or reports, the students could be disqualified from appearing for the examination. However, Mr. Khare who was present in Court confessed and pointed out that there is no direct provision for such checking as a condition precedent for granting permission to appear for the examination.

12. If, therefore, one goes through the Ordinances and Regulations, the relevant ordinance is OG-4 which requires that no candidate will be admitted for any examination unless he is certified by the Principal/Head of the institution that he has...

"(a) put in satisfactory attendance of at least 75 per cent of the total lectures/periods in theory, practicals, tutorials, in each and every subject of the semester/year.

(b) satisfactorily completed the laboratory practicals, term-work etc. prescribed for the semester/year.

(c) satisfactory progress in his studies and is of good conduct and character, and

(d) No candidate who has been debarred for any period from appearing for any examination, held by any Government constituted authority or statutory examining authority in India, at the time of examination held by the Board will be admitted to any of the semester/year examination during that period."

There is no provision which requires any further scrutiny of these certificates issued by the institution or head of the institution as such. Of course the argument is that if the Principal or the Head of the Institution had committed fraud certainly the Board could scrutinise the same. Here, the allegation is that the institution has no recognition and, therefore, the Principal or the head of the institution could not have issued the certificates. As I said, the question of recognition is not very relevant as far as this petition is concerned. The question here is one of the future of the students having allowed to be admitted in this institution and having kept their terms and done their practicals and with no

chance of their getting admission anywhere else for the academic year. Mr. Vyas pointed out this question may be referred to a "special committee" as provided under Ordinance OG-21 of the said rules. In my view, OG-21 would not apply to a situation comprised in this matter.

13. From the scheme of the examination I find that the assessment of the practicals are to be done as a part of the examination as such. In other words, under the scheme of the examination the students or the candidates have to appear in certain theory papers and they have also to appear for practicals. The theory papers are to be assessed separately. As far as the practicals are concerned, there is a separate assessment for the same. Similarly, there is a provision for separate marks for assessing the term-work and also the sessionals. In other words, it is for the examiners to assess the performance of these students in their theory papers, in the practicals, in their term-work, and in their sessionals. Ultimately, if the students pass they have a future of theirs and if they do not pass, this Court need not bother any further in that behalf.

14. Mr. Kotwal relied on the case of Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, , wherein certain students were admitted to certain engineering colleges when the students were not eligible for admission and yet for the sake of capitation fee those institutions gave admission to the students. Later on when they were required to appear for the examination, the Board refused permission. In the result, the students had to file writ petitions in the High Court of Karnataka which ultimately went upto the Supreme Court and that is what the Supreme Court said-

"The fault lies with the Engineering Colleges which admitted the appellants because the Principals of these Engineering Colleges must have known that the appellants were not eligible for admission yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the management of these Engineering Colleges."

There is another observation in another case of Suresh Pal and Others Vs. State of Haryana and Others, , which should apply very much to the facts of the case before me. The relevant portion is as follows :

"We are of the view that since at the time when the petitioners joined the course, it was recognised by the Govt. of Haryana and it was on the basis of this recognition that the petitioners joined the course, it would be unjust to tell the petitioners now that though at the time of their joining the course it was recognised, yet they cannot be given the benefit of such recognition and the certificates obtained by them would be futile, because during the pendency of the course it was derecognised by the State Govt. on 9th January, 1985."

15. In the result, the petitioners and such of the students who have appeared for the examination pursuant to the order dated May 11, 1988 would be entitled to the benefit of the following order :-

ORDER

Such of the petitioners and the respondents who have appeared for the examination pursuant to the order dated May 11, 1988 will be entitled to have their results declared by respondent No. 2-A and such results shall be declared on or before August 17, 1988.

In any event if the students i.e. the petitioners and the respondents herein desire to seek admission elsewhere, after the results of the examination, respondents Nos. 1 and 1-A shall give them the No Objection Certificate as well as the Polytechnic Leaving Certificate for seeking such admission and they shall comply with all such other requirements as would be necessary to enable the students to get admission in any other institution.

As regards the costs, I direct respondents Nos. 1 and 1-A to pay the costs of the petition to the petitioners in one set and to respondents Nos. 4 to 17 in another set. I quantify the costs at Rs. 1,500/- for each set. However, as far as the Government is concerned, the Government will bear its own costs.