

(2012) 07 BOM CK 0063

In the Bombay High Court

Case No : Writ Petition No. 5439 of 2012

Rakesh Balasaheb Landge

APPELLANT

Vs

Maharashtra State Board of Secondary and Higher Secondary
Education, Divisional Board, Aurangabad

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2012) 5 ALLMR 186 : (2012) 5 BomCR 871

Hon'ble Judges : U.D. Salvi, J;Naresh H. Patil, J

Bench : Division Bench

Advocate : Surekha P. Mahajan, for the Appellant; V.R. Sonwalkar, for the Respondent

Judgement

U.D. Salvi, J.—Heard. Perused petition along with annexures thereto, affidavit-in-reply and the record produced by the respondents. Rule. Rule made returnable forthwith. Heard finally by mutual consent of parties.

2. Articles 226 and 227 of the Constitution of India have been invoked to seek quashing of the notification dated 25.6.2012 issued by the respondent for imposing penalty of cancelling the achievement of the petitioner in 12th Standard (Science) examination conducted by the respondent in February/ March 2012 and for further prohibiting the petitioner from sitting for the said examination till October 2012, and to seek the directions for declaration of the result of the petitioner in the said examination.

3. The impugned notification was issued on the ground that the students named therein including the petitioner had resorted to wrongful act or misconduct in the course of Higher Secondary School Certificate Examination held in February/ March 2012. The genesis of this ground lies in a fact that the flying squad of the respondent had found one printed paper - purportedly 4 pages of the pocket study book published for H.S.C. students of Physics II subject lying on the floor beneath the bench in front of the bench occupied by the petitioner at the time of

the examination of Second Paper in Physics some time between 11.00 a.m. and 11.15 a.m. on 23.2.2012.

4. The petitioner submits that he was a meritorious student throughout his career since primary level and was busy solving the paper at the time the invigilator of the flying squad approached him near his bench in the examination hall at 11.07 Hrs. on 23.2.2012 and he knew nothing about such paper. The petitioner further submits that he was unaware of the invigilator's action when he approached him and asked him to get up from his seat and, thereafter, took one paper which was lying on the floor beneath the bench in front of his bench. He further submits that, he was under tension at that time as the time was being wasted and thereafter he was supplied with the second answer sheet at about 11.50 a.m. It is the case of the petitioner that he received a show-cause-notice requiring him to remain present on 31.3.2012 for the purposes of enquiry into the matter of finding the said piece of paper lying in front of his bench near the wall and the said notice was received by him on 27.2.2012. On 31.3.2012, the petitioner revealed, his statement as well as the statements of invigilator, Kendra Pramukh were recorded, and he had denied all the allegations made against him. According to the petitioner, another notice was received by him for re-enquiry to be held on 15.5.2012 without assigning any reasons therefore. On that day, he further revealed, his statement as well as the statements of the invigilator and Kendra Pramukh and flying squad member Mr. Borse, Deputy Enquiry Officer and other persons were recorded. The petitioner contends that the printed material alleged to have been recovered had no connection with the answers to the questions posed in the examination conducted on that day and there was nothing in the evidence to say that the said printed material belonged to him or was recovered from him. According to the petitioner, the procedure as prescribed for conducting the said enquiry was not followed, and the Enquiry Officers had given clean chit to the petitioner in both the enquiries conducted successively and yet the impugned notification penalising him was issued without application of mind by the Standing Committee of the respondent, and as such it deserves to be struck down.

5. The respondent resisted the petition with the affidavit-in-reply dated 13.7.2012. Virtually the facts revealed have not been disputed by the respondent except saying that it is not necessary to state all the things in the statements recorded in course of enquiry and there were no two enquiries, but the second one was the continuation of the first, and finding of even a blank piece of paper is unfair, malpractice attracting penal consequences. The respondent further countered that the main function of the Maharashtra State Secondary and Higher Secondary Education Board is to conduct fair and impartial examinations of 10th and 12th Standards in the State of Maharashtra and it is governed by Maharashtra State Secondary and Higher Secondary Boards Act, 1965 (hereinafter referred to as the Act). According to the respondent, the Board has powers to deal with the cases of unfair malpractices according to the procedure laid down by the State Board and for that purpose, Section 36 of the Act

provides for making of regulations for the purposes of giving effect to the provisions of the Act. Accordingly, the respondent reveals, regulations called as Maharashtra State Secondary and Higher Secondary Board's Regulations, 1977 have been framed.

6. Learned Advocate for the petitioner submitted that, nothing has been revealed in the course of the enquiries conducted by the respondent that the offending material - printed pages either belonged to the petitioner or the petitioner was seen throwing the said paper which could be finally recovered from the floor beneath the bench in front of the bench occupied by the petitioner and the said printed material had any nexus with the on-going examination. She further pointed out that the Enquiry Officers had exonerated the petitioner and yet the Standing Committee, without assigning any reasons for holding the petitioner guilty of misconduct, had issued the impugned notification.

7. Mr. Sonwalkar, learned Advocate for the respondent submitted with reference to penal provisions under Schedule of punishments prescribed in relation to the misconduct committed by the students in course of 10th and 12th (Secondary School and Higher Secondary School Certificate) Examinations - Sr. No. 19 that the penal consequences follow even in case of detection by flying squad of the incident of throwing illicit material (any writing/ related manuscript pages from the book, guide, map in relation to the subject) on the back or in front by the examinee. He further submitted that meritorious background of the examinee has nothing to do with the offence he commits.

8. It is true that incident in question is material and not the meritorious background of the examinee in assessing his involvement in the misconduct alleged against him. However, a fact cannot be ignored that the alleged misconduct attracts penalty consequences and, therefore, a strict scrutiny of such allegations is warranted before drawing any conclusions regarding the alleged misconduct.

9. Pertinently, the printed material was not found on the person of the petitioner but was found on the floor beneath the bench in front of the bench occupied by the petitioner. Kendra Pramukh had very little to say in respect of the incident in question as he was not present with the flying squad in the examination hall at the material time. The Supervisor in examination hall gave a statement that the flying squad arrived in the hall within 10 to 15 minutes of the commencement of the examination and the said printed material was found lying by the flying squad on the floor in the vicinity of the petitioner, but nothing was found written by the petitioner in his answer sheet from the said printed material vide statement dated 9.4.2012. The Supervisor in his statement dated 15.5.2012 further clarified that the candidates appearing for the examination were physically searched, and he had full control over the examinees giving the examination and had noticed that the petitioner was not writing his answer sheets by looking at any material. Kendra Pramukh gave the statement on 15.5.2012 and revealed mute concurrence with the flying squad's findings

without shedding any light on the incident except the fact that he had allowed the examinees to enter the examination hall after physical check. Statement of Mr. Borse, Member of the Flying Squad only reveals that the said printed material was found lying on the floor near the wall in front of the bench occupied by the petitioner and the petitioner had maintained silence regarding such finding. Obviously, the petitioner was not found throwing the said printed material.

10. A question, therefore, arises whether the penal consequences as stipulated at Sr.No.B-19 of the Schedule of punishments can visit a student giving examination and maintaining silence on recovery of such material lying on the floor in the examination hall ? May be such printed material was found lying in the vicinity of the bench occupied by the petitioner, but a possibility is not ruled out that this could have been thrown by any other person at the said spot. Maintaining of silence cannot be regarded as infallible symptom of guilt as there could be many reasons, one of them being the ignorance of the fact, for maintaining such silence. Much depends on the psyche of a person involved and the circumstances then obtaining at the material time for his silence to occur. It is for these reasons, it appears, the Enquiry Officers successively held the petitioner not guilty of the alleged misconduct.

11. Perusal of the minutes of the meeting of the Standing Committee of the Board held on 30.5.2012 reveals no reasons assigned by the Standing Committee for holding the petitioner guilty of misconduct contrary to the view expressed by the Enquiry Officers in successive enquiries. In fact, the enquiry officer reached conclusion of "not guilty" vide reports dated 9.4.2012 and 18.5.2012. However, the relevant resolution granting approval to the issuance of impugned notification recorded that on perusal of cases R020363..... (case in question), all statements, reports, it was revealed that it was the case of recovery of copy material and as such, it was proved that the examinees had resorted to misconduct or wrongful act....and, therefore, the recommendations of enquiry officer for imposing punishment had been approved. Record thus made by the Standing Committee is contrary to what is revealed from the record of the case and as such, there can be nothing better to point out therefrom a case of non application of mind by the Standing Committee. Impugned notification, therefore, deserves to be struck down. Notification dated 25.6.2012 issued by the respondent Board for cancelling the complete performance of the petitioner (Seat No. R020363) in the 12th Science - Higher Secondary School Certificate examination conducted in February/ March 2012 and prohibiting the petitioner from appearing in the examination till October 2012 is quashed and set aside. The respondent is directed to declare the result of the petitioner in 12th Science - Higher Secondary School Certificate examination conducted in February/ March 2012. Rule made absolute in terms of the above order.