
(2018) 06 BOM CK 0063
In the Bombay High Court
Case No : WRIT PETITION NO.328 of 2014

SHIVA DHAWAN,

APPELLANT

Vs

SVKM'S NARSEE MONJEE INSTITUTE OF MANAGEMENT
STUDIES, AND ANR.

RESPONDENT

Date of Decision : 20-06-2018

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2018) 06 BOM CK 0063

Hon'ble Judges : S.C. DHARMADHIKARI, J; .BHARATI H. DANGRE, J

Bench : Division Bench

Advocate : Mihir Desai, Manorama Mohanty, A.P. Singh, Rui Rodrigues

Final Decision : Disposed Off

Judgement

BHARATI H. DANGRE, J

1 The petitioner, an MBA holder has approached this Court seeking issuance of a writ for quashing and setting aside the impugned order dated 30th

July 2013 passed by the respondent no.1 Institute, thereby cancelling the degree conferred upon him.Â The grievance raised in the petition is that the

impugned action suffers from violation of principles of natural justice, and according to the petitioner, no adequate opportunity was afforded to him

before initiating the said impugned action.

2 The petitioner, after obtaining a degree of B. Pharm from Kurukshetra University appeared for the Common Entrance Test (CET) for the MBA

course (Pharmaceutical Management).Â He participated in the said selection process and appeared for the written examination i.e. NMAT Test

(Common Entrance Test) conducted on 19th November 2010 at KeenÂÂAble Systems Tata Infotech (APLC) Indore.Â On the basis of the marks

scored by him in the written examination, he was shortlisted for group discussion and personal interview (GD/PI) for MBA (Pharmaceutical

Management) as well as MBA (core) which he opted for.Â Based on his performance in the GD/PI, he was called for the interview and on the basis

of the scores achieved by him, he was admitted to the MBA course in the Academic Year 2011Â2013 in the SVKM's Narsee Monjee Institute of

Management Studies, Vile Parle, Mumbai i.e. respondent no.1.

3 The petitioner completed his MBA course by successfully clearing 6(six) semesters in first attempt in the year 2013.Â He was conferred with a

degree on 20th April 2013. On obtaining the said degree, he was recruited by a Company registered under the Companies Act and is presently

working in the said Company.Â

It is the case of the petitioner that on 26th June 2013, the respondent no.1 issued a show cause notice to the petitioner asking him to show cause as to

why the admission granted to him for the Post Graduate Degree for MBA (Pharmaceutical Management) Programme and the degree awarded to him

on 20th April 2013 should not be cancelled.Â It was alleged in the said show cause notice that the petitioner had adopted unfair means for securing

admission to the MBA Programme for the year 2011Â13 batch and a complaint in this regard was lodged by the respondent no.1 NMIMS with the

Crime Branch, Mumbai on 7th May 2013.Â Â In the said notice, it was alleged that the petitioner had engaged a â??dummy candidateâ? to appear

on his behalf for the NMAT Test on 19th November 2010 at the KinnÂNÂAble Systems Tata Infotech APLC, Indore conducted by the NMIMS, for

the year 2011Â13 batch.Â It was also alleged that the dummy candidate who appeared on behalf of the petitioner had forged and fabricated the

documents by creating a false identity card and by impersonating the petitioner.Â It was also stated in the said notice that the Crime Branch had

registered an FIR bearing No.11/13 based on the complaint lodged by NMIMS, and during the course of investigation, the Crime Branch, Mumbai had

arrested several persons.Â The petitioner was therefore asked to show cause as to why the admission obtained by him by adopting unfair means,

should not be cancelled and since the degree was already awarded to the petitioner, why the said degree conferred on him for the MBA programme

be not cancelled by treating all the examination results as null and void.

4 The petitioner submitted his reply in response to the said show cause notice and addressed the same to the Director (Admn) and I/c Registrar,

NMIMS, Vile Parle, Mumbai.Â In the reply, the petitioner denied the allegations levelled in the said show cause notice and specifically denied that he

had engaged a 'dummy candidate' to appear on his behalf for the NMAT Test conducted on 19th November 2010.Â The petitioner canvassed that he

is a fairly meritorious student throughout his career and he himself had appeared in the NMAT Test held on 19th November 2010 and that his

appearance was duly checked by the relevant authorities.Â He demonstrated that on successful completion of the MBA course with a score of 2.96

CGPA out of 4, he was not required to take assistance of any dummy candidate.Â The petitioner challenged the said notice on the ground that he had

sought admission to the course in the year 2010 and a show cause notice was issued to him on completion of the course and after a lapse of almost

three years which was highly unfair.

In the reply to the show cause notice, the petitioner also demanded the documents/material relied upon in the show cause notice in order to effectively

respond to the said show cause notice.Â He also submitted that he would submit an exhaustive reply after the said documents and material is made

available to him.Â

5 The petitioner has contended in the writ petition that he was not supplied with the documents which he had demanded and rather his reply to the said

show cause notice was clamped as 'unsatisfactory' and it was reiterated by authorities that at the time of appearing for group discussion and personal

interview, the candidate was required to produce print out of the score card along with other documents and the petitioner had submitted the score

card obtained in the 'NMAT Test' and his ranking in the merit list.Â It was further observed that the fact that the petitioner has downloaded the merit

list showing his rank as '30' in the merit list itself falsified the contentions made in the reply.Â The copy of the complaint letter and the FIR copy was

enclosed along with the communication dated 30th July 2013 and it was informed to the petitioner by the Director (Administration) and I/C Registrar

on 30th July 2013 that since the documents are now made available to the petitioner, his degree of two years programme for the year 2011Â13 is

cancelled and all the results of the examination were treated as null and void.Â

It is this communication which is assailed in the present writ petition.Â

6 Shri Mihir Desai, learned senior counsel appearing for the petitioner would specifically submit that the entire action of the respondent no.1 is

arbitrary and he would submit that inspite of a specific demand of the documents and the material on the basis of which the show cause notice was

issued, the petitioner was not supplied with the said documents.Â He would submit that the copy of the FIR and the complaint is supplied to the

petitioner along with the impugned order passed on 30th July 2013, clearly reflecting that the petitioner was not afforded any opportunity to deal with

the said material which is sought to be relied upon by the respondent no.1 against the petitioner in arriving at a conclusion that the petitioner had

adopted unfair means during the conduct of the entrance examination.Â Learned Senior counsel would also submit that perusal of the academic

record of the petitioner would reveal that he is a meritorious student and he has cleared the MBA curriculum with good score and had it been a case

that he would have used some dummy candidate at the entrance examination, he would not have been in a position to clear the 6(six) semesters of

MBA course in first attempt.Â The learned senior counsel Mr.Desai would vehemently submit that due to the arbitrary action of the respondent no.1,

the entire career of the petitioner is put at stake and in spite of hard efforts being put by him to secure the admission to the MBA course and on

successful completion of the said course by his sheer hard work of two years, he has been deprived of its fruits.Â He would also submit that the said

action has been taken without affording any adequate opportunity to him by nonÂsupplying the necessary documents and by not conducting any

inquiry and thereby giving him an opportunity to deal effectively with the allegations levelled against him in the show cause notice.Â He would submit

that the impugned order merely records that the reply given to the said show cause notice by the petitioner was not found to be satisfactory and hence

he would submit that the action of cancellation of his admission and withdrawal of the degree conferred upon him in the year 2013 is clearly violative

of the principles of natural justice and the said impugned action cannot be sustained.

6 The respondent no.1 justified its action by filing an affidavit in reply through the Registrar.Â In the said affidavit, it is stated that the petitioner did

not appear for the NMAT Test and a dummy candidate appeared on behalf of the petitioner on the test conducted on 19th November 2010. The said statement is sought to be justified by making a categorical statement in the affidavit that the copy of the photograph of the dummy candidate and the signature thereto, clearly reflect that the petitioner has not appeared for the NMAT test and also the signature on the document itself shows that the same is not of the petitioner. It is further stated in the affidavit filed on behalf of the respondent no.1 that the signature of the dummy candidate and the signature of the petitioner itself are different and thus it was clear that the petitioner in the petition has not passed the NMAT test. The affidavit further states that after verification of the records and the documents, first respondent was not satisfied with the explanation given by the petitioner and hence rejected his contention and cancelled his degree of two years MBA programme and declared the results of the examination as null and void.

As far as the allegation of the petitioner about nonobservance of principles of natural justice, it is stated in the affidavit that the petitioner has indulged himself in an unfair practice and has adopted unfair means and thereby secured the marks through a dummy candidate who appeared for him by forging and fabricating documents and creating false identity. It is specifically denied that the petitioner was not given a fair and proper opportunity to present his case as alleged.

It is further stated that, it is not necessary to hear the petitioner nor was it necessary to provide the documents and the material on the basis of which the impugned show cause notice was issued and in fact, on his request, all the documents were furnished to the petitioner and since no personal hearing was sought by the petitioner, it was not granted. It is therefore, denied that the respondents' action is violative of principles of natural justice.

7 We have perused the petition along with its annexures and also the affidavit in reply filed by respondent no.1 and we have also heard the learned counsels representing the petitioner as well as respondent no.1. On perusal of the rival claims of the parties, it is not in dispute that the petitioner was awarded an MBA degree on completion of the MBA curriculum from the respondent no.1 Institute in MBA (Pharmaceutical Management) course. The said degree has been conferred on the petitioner on 20th April

2013. On 26th June 2013, for the first time, a show cause notice came to be issued to the petitioner asking him to show cause as to why the MBA degree awarded to him should not be cancelled. Certain serious allegations are levelled in the said show cause notice and it is alleged that the petitioner has adopted unfair means for securing admission to the MBA Programme for the year 2011-13 batch. The case of the respondent no.1 is that the petitioner has secured admission to the MBA course by adopting fraudulent means. The respondent no.1 has relied upon clause no.3.9 of the handbook/Admission Brochure which reads thus:

3.9 If at any stage, it is found that a candidate does not satisfy the eligibility criteria or the information furnished by him/her in the online registration is incorrect, his/her application for the admission to the Program, even if selected, will stand cancelled. Candidates appearing for NMAT, Group Discussion & Personal Interview will do so at their own risk, eventually, forfeiting their admission for want of meeting the eligibility criteria.

6 No doubt it is the specific case of the respondent that for conducting the NMAT, the services of the Pearson Vue India which is part of the world's largest Education Company which conducts the prestigious tests like GMAT and other competitive examination was engaged which noticed large scale unfair means for obtaining admission to the MBA course. Based on the said findings recorded by the Pearson Vue in respect of the students which included name of the petitioner, a complaint was lodged with the Crime Branch, Mumbai against the illegal acts of the students for securing admission to the MBA course by making use of dummy candidate and an FIR has been registered on 7th May 2017 and several persons came to be arrested in due course of investigation. It is no doubt true that if such a fraud has been unearthed, it has to be dealt with sternly. However, in the present case, it is noted that apart from filing the FIR which has resulted into filing of the charge sheet, the respondent no.1 has only issued a show cause notice to the petitioner on 26th June 2013. No document/material was supplied to the petitioner which would have afforded an opportunity to the petitioner to deal with the allegations levelled against him in the said show cause notice. The petitioner repeatedly demanded the said documents which came to be supplied to the petitioner on 30th July 2013 with the impugned

order itself.Â The documents supplied included a copy of the complaint letter and the copy of the FIR registered with the Crime Branch, Mumbai.Â Â However, it is seen that though the serious charges are levelled in the show cause notice in relation to adopting unfair means for securing admission to the MBA programme for the year 2011Â13, the same have not been inquired into and merely because the reply to the show cause notice submitted by the petitioner was found to be unsatisfactory, the charges levelled against him have been concluded and by the impugned order, the degree of the petitioner for the MBA course has been cancelled and the results of all his examinations have been treated as null and void.Â The said action of the respondent no.1, surely results into civil consequences and rather robs the petitioner of the degree which was conferred upon him on completion of the two years MBA curriculum.Â However, before foisting him with such serious consequences, it is not preceded either by an inquiry conducted by respondent no.1, or any independent Enquiry by an Officer nominated by respondent no.1.Â

7 The respondent no.1 is an institute imparting education in management studies and since it is a State recognized institute, all its decisions would be subject to the doctrine of equality and fair play as incorporated under Article 14 of the Constitution of India.Â Â If any of its actions or administrative decisions result into civil consequences, the said actions or decisions are liable to be judicially reviewed or tested on the anvil of principles of natural justice.Â Soul of administrative law is fair play in action.Â The underlying principle of natural justice is to reach at just decision by an authority before adversely affecting any legal, statutory or constitutional right of a person and to act fairly and impartially. Though there are no fixed norms or rules as to what form or procedure would amount to an acting with fairness, the bare minimum expected from an authority exercising such power is to observe the principles of natural justice.Â By now, it is a settled proposition of law that if there is a power to decide and if such decision is detrimental or prejudicial to a person, the duty to act judicially is implicit in exercise of such power and the rules of natural justice must be adhered to.Â Â The giving of of an opportunity of being heard is a concomitant of the principles of natural justice and whenever any action of a public body results in civil consequences for the persons against whom the action is directed, the duty to

act fairly can be presumed and it would involve imparting an adequate opportunity of hearing to the affected party.

The decision taken by the respondent no.1 cancelling the degree of the petitioner is likely to have far reaching consequences as far as the petitioner is

concerned, since it adversely affects his right to hold a degree and to progress in his future life on the basis of such a degree, thereby adversely

hampering his career prospects.Â Since the impugned order which results in civil consequences is passed without adhering to the principles of natural

justice and without affording an opportunity to the petitioner, and since it is admitted in the affidavit filed on behalf of the respondent no.1 that no such

opportunity of personal hearing was afforded, it has resulted into a clear violation of principles of natural justice, rendering the entire action as null and

void.Â Such a gross violation goes to the root of the matter and the action of the respondent no.1 cannot be sustained.Â Thus, prejudice to the

petitioners is writ large in this case.Â More so, when the petitioner appeared for the written exam and the group discussion in November 2010,

nothing was found then and he was admitted to the MBA Course and studied from 2011 to 2013.Â He appeared at the exams held for this course

and it is not alleged that either he did not attend the classes or somebody else appeared at the examinations of the MBA course which he successfully

cleared. Hence, to now allege that the admission was secured fraudulently is a drastic action and demands adherence to the principle of audi alteram

partem.

8 Since the impugned communication results into serious civil consequences, the respondent no.1 ought to have communicated the charges of

imputation, afforded an opportunity to the petitioner to deal with the charges, on submission of the necessary documents on which the charges were

levelled and after conducting an inquiry and after affording the petitioner an opportunity of rebutting the charges, the respondent no.1 ought to have

passed the impugned order. This appears to have not been done and on the other hand, the respondent no.1 have admitted in their affidavit in reply

that there was no necessity to hear the petitioner since admission was secured on the basis of fraud.Â However, mere allegation of fraud is not

sufficient, as the fraud would be required to be proved by bringing material on record.

9 In the light of the aforesaid undisputed position, the impugned order passed by the respondent no.1 on 30th July 2013 cannot be sustained. It is

hereby quashed and set aside being passed in utter violation of the principles of natural justice.

10 The respondent no.1 is directed to proceed against the petitioner by initiating an inquiry, by supplying imputation of charges to the petitioner within a period of 15 days from the date of passing of the order with an opportunity to the petitioner to respond to the said charges within the next 15 days.

The respondent no.1 is then directed to inquire into the said charges levelled against the petitioner by following the principles of natural justice and by

affording adequate opportunity to the petitioner to meet the said charges. Needless to say that the petitioner should also be supplied with the relevant

material relied by the respondent no.1 while framing the charges and after completion of the inquiry, the respondent no.1 would follow the further

course of action either declaring the petitioner to be guilty of adopting unfair means for securing the admission to the MBA programme and if on

conclusion of the inquiry, the respondent no.1 is of the opinion that the said allegation has not been proved, it would drop the action against the

petitioner. The entire exercise should be carried out by the respondent no.1 within a period of 12 weeks from the petitioner responding to the

imputation of charges.

With the aforesaid directions, writ petition is disposed of.

Rule is made absolute in the aforesaid terms.