
(2001) 01 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No's. 1513, 1576, 1581 and 1582 of 2000

Shri Kalpesh Suhas Pawar etc.

APPELLANT

Vs

Mah. State Board of Secondary and Higher Secondary
Education and Others

RESPONDENT

Date of Decision : 15-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2001 Bom 168 : (2001) 2 ALLMR 96 : (2001) 2 BomCR 670 :
(2001) 2 MhLj 911 : (2001) 2 MhLj 910

Hon'ble Judges : A.P. Shah, J; A.M. Khanwilkar, J

Bench : Division Bench

Advocate : V. Mannadiar, instructed by Mannadiar and Co. and P.B. Shete, S. Jadhav and Deepak Jadhav, for the Appellant; S.S. Chavan, i.b., Little and Co. and R.A. Rodrigues, A.A. Sayed and N.C. Patel, for the Respondent

Judgement

Khanwilkar, J.—Rule. Returnable forthwith by consent.

Heard both sides.

All these petitions can be disposed of by a common order as they involve similar issues.

2. Briefly stated the petitioners in the respective writ petitions were pursuing their studies in respondent No. 2 Junior College. The petitioners submitted an application for permission to appear in standard XII examination conducted by the 1st respondents. The said forms were duly accepted. Thereafter the petitioners were informed by the respondent No. 1 that they had not fulfilled the requirement of minimum attendance of 75% and they should ensure that they complete the minimum attendance by attending all classes till the end of the term. It is not in dispute that the petitioners were issued hall tickets to appear for the XII standard examination to be conducted in May, 2000. It is stated that on the basis of some complaints the Board enquired into the matter and took decision that the results of the petitioners shall not be declared and that their

admission to the said examination stands cancelled. The present petitioners have taken exception to the said decision of the Board which has been communicated to the petitioners by respondent No. 1. The petitioners rely upon the decision of the Apex Court reported in the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, , to contend that once the hall tickets were issued and the petitioners have appeared for the examination it is wholly improper to withhold the results on the ground that the petitioners did not complete the minimum attendance of 75% as required under the regulation.

3. The counsel for the respondent-Board on the other hand contends that the decision relied upon by the petitioners is of no avail in view of the specific provision contained in the regulation, being Regulation No. 91 which enables the Board to cancel the admission to the examination when the Board is satisfied that the admission is affected by error, malpractices, fraud or improper conduct. The counsel further contends that necessary inquiry was conducted by the Board and it was found that the petitioners were not eligible to appear in the examination since they did not keep the minimum attendance of 75% as required under the regulation. The Id. counsel further contends that the decision of the Apex Court has been distinguished by this Court in similar situation in Writ Petition No. 1572 of 2000 decided on 3-10-2000 by the Bench of B.N. Srikrishna and Ranjana Desai, JJ.

4. Before proceeding to consider the rival submissions it would be appropriate to reproduce Regulation 91 which reads thus :

91. Cancellation of admission to the Examination.

(1) In any case, where it is found that the candidate's admission to the Higher Secondary Certificate Examination has been affected by error, malpractice, fraud or improper conduct, or where his very admission to the Second Year of a Junior College is found to be irregular, the Divisional Board, on the recommendation of the Standing Committee, shall have the power to cancel the candidate's admission to the examination and to forfeit the examination fee, if any, paid by the candidate, notwithstanding the inclusion of the name of the candidate in the list of candidates registered for the examination, or the candidate's actual appearance at the examination, in one or more subjects and also to debar the candidate from appearing for the examination for such further period as the Divisional Board may determine in each case.

2. It shall be competent for the Divisional Chairman to admit a candidate to the examination provisionally, where any enquiries in respect of his eligibility for admission to the examination are in progress or contemplated and in the light of the final decision regarding his eligibility, to deal further with his case as per the provisions of these Regulations."

5. It is not in dispute that the Board caused an inquiry into the complaints received that serious malpractices were committed in the respondent-college and that many students who did not even attend the minimum required percentage

of classes have been allowed to appear for the examination. When the said inquiry was initiated, notices were issued to the respective students as well as to the teachers against whom serious allegations have been made by the concerned students. The defence of the students was that they were not marked present, although they had attended classes, because the students did not oblige the concerned teachers by attending the coaching classes in which the said teachers were associated. In the circumstances the concerned teachers were also issued show cause notices. The inquiry was conducted by the Enquiry Officer appointed by the Board and he has recorded finding that the students in question did not attend the minimum number of lectures (75%) and were, therefore, not eligible to appear in the examination. The Enquiry Officer has also recorded the finding that the principal has accepted this position but has not recommended case for condonation of deficit attendance of the students. According to the Enquiry Officer the deficiency in attendance can be condoned only for medical reasons and not otherwise. In the circumstances the Enquiry Officer recommended that the students in question were not eligible to appear in the examination.

6. We have perused the original record including the statement of students and teachers recorded by the Enquiry Officer as well as the reasons recorded by the Enquiry Officer. We find that although the students had specifically complained that the teachers had played mischief by not marking them present for obvious reasons, however, the show cause notice issued to the concerned teachers does not call for any explanation in this behalf; moreover even the Enquiry Officer has not adjudicated the matter in this context. In view of the decision of this Court in Writ Petition No. 1572 of 2000 dated 3-10-2000, there can be no doubt that the Board is entitled to cancel the admission to the examination in a given situation provided for in the Regulation No, 91, however, it is obligatory on the Board to first inquire into the matter by giving proper opportunity to the students. In the present case, since the students came with a specific case, it was necessary for the Enquiry Officer to go into the said allegations in detail and record a clear finding as to the correctness or otherwise of the said allegations and only thereafter proceed to take a final view in the matter. However, this is not how the Enquiry Officer has proceeded in the present case. We are, therefore, of the view that it would be appropriate to direct the respondent-Board to initiate fresh inquiry by giving show cause notices to all concerned and after giving opportunity to the students as also investigating into the allegations made by the students take a final decision in the matter. It would be open to the Board to take recourse to Regulation 91 if it is satisfied that action under the said provisions is warranted and also pass appropriate orders. However, if the Board decides not to take action in the given case under Regulation 91 then the Board shall declare results of such candidates against whom no action is to be taken. We make it clear that the Board is not under obligation to declare the results till the inquiry is concluded and final decision arrived at. The Board shall initiate fresh inquiry and take final decision within the period of four weeks from the date of receipt of writ of this Court. We also make it clear that the Board shall not be influenced by

any of the proceedings in the earlier inquiry or the conclusions reached by the Enquiry Officer in the said proceedings.

Rule made absolute in the above terms.