

(2024) 04 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No.926 Of 2024

Soheb Sageerali Khan

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 01-04-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2024) 04 BOM CK 0016

Hon'ble Judges : A. S. Chandurkar, J;Jitendra Jain, J

Bench : Division Bench

Advocate : Yogesh Joshi, Harshad Joshi, Jaymala Ostwal, Kiran Gandhi

Final Decision : Allowed

Judgement

Jitendra Jain, J

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.
2. By this Petition under Article 226 of the Constitution of India, the Petitioner has prayed for following relief :
“(a) issue an appropriate writ, order or direction and set aside the decision of Respondent No.2 in cancelling the H.S.C. Examination Result of 2018 of the Petitioner and further issue necessary direction directing the Respondent No.2 to issue Marksheet of the Petitioner for H.S.C. Examination Result 2018 forthwith;”
3. In February 2017, the Petitioner, a science student appeared for his Higher Secondary Certificate Examination conducted by Respondent No.2 and secured 55.37 percent marks. Since the marks secured did not make the Petitioner qualify to appear for National Eligibility Cum Entrance Test (for short 'NEET'), the Petitioner availed benefit for re-examination and secured 65.2 percent marks.
4. The Petitioner thereafter started preparing for NEET exam by joining Allen Career Institute, Kota at Rajasthan. The Petitioner appeared for NEET exam on more than one occasion. The Petitioner now further proposes to appear again for

the NEET examination in 2024.

5. The Petitioner in the year 2022 requested Respondent No.2 to issue him the marksheet of his re-examination wherein he had secured

65. 2 percent marks in 2018 exam. The Respondent No.2 rejected the said request on the ground that the Petitioner has failed to collect his marksheet within a period of six months from the date of result and therefore his result stands cancelled. It is on this backdrop that the Petitioner is before us seeking the relief has prayed for and reproduced above.

6. We have heard the learned counsel for the Petitioner and the learned counsel for the Respondents and with their assistance have perused the documents annexed to the Petition and the Affidavit-in-reply filed by Respondent No.2.

7. The short issue which arises for our consideration is as to whether Respondent No.2 is justified in refusing to issue marksheet of the re-examination and cancel his results of the earlier attempt.

8. The object of re-examination is to enable a student to improvise his score so as to enable him to choose the better of the two examination marks for the purpose of higher education. The Maharashtra State Board has adopted this policy with an object of enabling a student to better his earlier performance. It is keeping in mind this objective that the present writ petition requires adjudication.

9. The Respondent No.2 has taken us through letters dated 6th May 2013, 15th May 2013 and Resolution dated 3rd November 2012 by which the aforesaid scheme has been implemented. On a perusal of the said scheme, we could not find any provision which states that if a student does not collect his marksheet within a period of six months from the date of result then the result itself stands cancelled and no marksheet would be issued although there is a provision for collecting the marksheet within six months on payment of certain fees/charges.

10. The aforesaid scheme provides that if result of examination is affected due to mistake, inappropriate behaviour or any other thing till the period of six months from announcement of results in accordance with Board Regulation Rule No.55(2) and 102(2), there is provision to alter the result till six months by the Standing Committee of Divisional Board. In our view, this provision does not apply to the case of the present Petitioner since the result of examination is not affected due to mistake or inappropriate behaviour. Therefore even on this count, the refusal by Respondent No.2 cannot be sustained.

11. We fail to understand the stand of Respondent No.2 as to when a student has cleared his re-examination with improved marks then merely because of the ministerial act of the student not having collected the marksheet, his result itself stands cancelled. There is no logic beyond such a refusal or cancellation.

12. Even otherwise, the Petitioner has explained in paragraph Nos.5 and 6 of the petition, the reason for the delay in approaching Respondent No.2 to collect the

marksheet. The reason being that the Petitioner in 2018 went to Kota at Rajasthan for preparation of his NEET examination and thereafter appeared and made various attempts to crack NEET examination successfully. The Petitioner has stated that he was under a bonafide belief that he can collect the original marksheet from the college after his successful attempt at NEET examination. It was only recently that he realized that the said belief was misconstrued by him, and therefore, immediately approached Respondent No.2 for revised marksheet. We do not find any reason to reject the said explanation for the delay in collecting the marksheet. Therefore even on this count, the present writ petition ought to succeed.

13. The Petitioner has relied upon the decision of this Court in the case of Ankit Arunkumar Sharma vs. Maharashtra State Board of Secondary and Higher Secondary & Ors. 2018 SCC OnLine Bom 10443, wherein on a very similar situation this Court had permitted the student to collect marksheet beyond the period of six months on a payment of Rs.1,000/-.

14. In view of our above analysis and reasoning, we pass the following order.

ORDER

(i) The Petitioner to approach the Respondent No.2 with a copy of this order and make a request for issuing the revised marksheet.

(ii) The Petitioner to surrender his original marksheet where he has scored 55.37 percent marks along with the aforesaid application.

(iii) The Respondent No.2 to intimate the Petitioner on the receipt of the application referred to (i) above about the charges to be paid for issuing the new marksheet which indicates he has scored 65.2 percent marks.

(iv) The Petitioner to make the payment of the said charges and on payment of the same, Respondent No.2 to issue the revised marksheet immediately.

(v) It is directed that on the Petitioner returning the original Statement of Marks that has been issued to him for passing the Higher Secondary Certificate Examination – February 2017 and paying all necessary charges, the Respondent No.2 shall issue the Statement of Marks for the Higher Secondary Certificate Examination undertaken by the Petitioner in the year 2018 where he secured 424 out of 650 marks.

(vi) We accept the reasons stated by the Petitioner in paragraphs 4, 5 and 6 of the writ petition in peculiar facts of the present case.

(vii) Rule is made absolute in the above terms.

(viii) Parties to act on the authenticated copy of this order.

14. The Writ Petition is allowed in above terms. Rule accordingly.

No costs.