

(1999) 07 GUJ CK 0030

In the Gujarat High Court

Case No : Special Civil Application No's. 4045 and 4686 of 1999

Sunny Dharampalsingh Chaudhary

APPELLANT

Vs

Gujarat Secondary Education Board and Another

RESPONDENT

Date of Decision : 23-07-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226
Gujarat Secondary Education Act, 1972 — Section 17(33)

Citation : AIR 2000 Guj 17

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Advocate : R.S. Sanjanwala, for the Appellant; A.D. Oza, (for No. 1), for the Respondent

Final Decision : Allowed

Judgement

M.R. Calla, J.—These two petitions are based on identical facts and involve common questions of law. I, therefore, propose to decide both these petitions by this common judgment and order.

2. The petitioners herein were studying in Xth Std. at St. Xaviers High School, Gandhinagar. They have come with the case that they are students with good academic record throughout and in one of the petitions, the petitioner Sunny Chaudhary has also annexed copies of mark-sheets of the Examinations of VIIth, VIIIth and IXth Stds. to evidence the fact that he has been a First Class student. He has also annexed the copy of the mark-sheet at page No. 20 of this petition to show that he has been given Grade-I in the Xth Std. itself for the First and Second Terms. Regarding the other petitioner namely, Master Sushant Chopra, it has been stated in paragraph 4 of the petition that he has been studying in the St. Xaviers High School, Gandhinagar since IIIrd Std. and he has throughout passed with distinction marks and never failed in a single subject. Both these students claiming good academic record as First Class students, appeared in the Xth Std. Examination conducted by the Gujarat Secondary Education Board,

hereinafter referred to as "the Board", in the month of March 1999. They had appeared in all the papers of the Secondary School Certificate Examination and the last paper was that of music, held on 27th March 1999, whereas the examinations had actually commenced on 15th March 1999. Both these students have been punished by the Board on the allegation of use of unfair means in this Music Examination which was held on 27th March 1999 and they have been visited with the punishment of the cancellation of the 1999 Examination as a whole. The communication with regard to this punishment to both these students is sent by the Examination Secretary of the Board to the Principal of the St. Xaviers High School Gandhinagar. Aggrieved from this punishment of cancellation of their 1999 Examination on the allegations of use of unfair means in the Music Theory paper, both these petitioners have approached this Court under Article 226 of the Constitution of India.

3. When the Special Civil Application No. 4045 of 1999 came up before this Court on 21-6-1999, the notice returnable for 28th June 1999 was issued and in Special Civil Application No. 4686 of 1999 the Rule and notice as to interim relief was issued on 2nd July 1999 and made returnable on 14th July 1999. In Special Civil Application No. 4045 of 1999, the Rule was issued on 8th July 1999.

4. In Special Application No. 4045 of 1999 in the form of pleadings, apart from the petition as was filed by the petitioner, an affidavit-in-reply dated 30th June 1999 was filed by one Shri P.U. Vyas, Secretary, Gujarat Secondary Education Board, to which an affidavit-in-rejoinder dated 2nd July 1999 has been filed by the petitioner, followed by a further affidavit-in-rejoinder dated 19th July 1999 and an additional affidavit of respondent No. 1 dated 21st July 1999 has been filed. In Special Civil Application No. 4686 of 1999, the affidavit-in-reply dated 15th July 1999 has been filed on behalf of the Board through its Assistant Secretary, Shri G. T. Bhil.

5. It appears from the documents available in Special Civil Application No. 4045 of 1999 that, by the office of the Board, a letter dated 9th April 1999 was sent to the Principal of the School where the two boys were studying, informing the Principal that the petitioners had been found to be using unfair means in the paper of Music on 27th March 1999 and the Principal may obtain written reply and may also send him the copies of the two Forms which were enclosed with this letter. One of these Forms is with regard to the demand of personal hearing and the other was a notice in which it was mentioned that the petitioner had been caught with a booklet on Music with 14 pages in the paper of the Theory of Music on 27th March 1999 and that for the use of unfairmeans as such, why the action should not be taken against him and he may remain present at the Government Girls High School, Raygadh, Ahmedabad, on 23rd April 1999 at 12 O" Clock. It is given out that similar treatment was given to the other petitioner in Special Civil Application No. 4686 of 1999. It also appears from the additional affidavit dated 21st July 1999 filed by the Director of Examination of the Board that in the Control Room of the Board's Office, a message was received on

phone that at the Centre of Government School, copying is taking place; the Vice Chairman of the Board directed the deponent of this additional affidavit, namely, Dr. Ishwarbhai M. Patel, Director of Examinations of the Board to visit the Centre. He has stated that the Centre was visited and an announcement was made that, if any candidate is having material pertaining to the subject, he should surrender it to the Block Supervisor and in spite of this warning, the petitioner did not surrender the material which was found from the petitioner. It has also been stated that in all, six students were caught from different blocks (class-rooms). The cases were registered by the Supervisor and Building Conductor. It has also been stated that this incident took place at 11.30 a.m. whereas the Examination had already started at 10.30 a.m. It also appears that all these six students including the present two petitioners had made a joint representation to the Chairman of the Board, the copy of which has been placed on record as Annexure-E which also shows that the copy of this representation was also sent to the Chief Minister, Education Minister, Secretary to the Government in the Education Department and the Examination Secretary of the Board in Gandhinagar. In the affidavit-in-reply dated 30th June 1999, it has also been stated that the petitioners parents had tried to pressurise the Board by political means to the maximum as if they felt that they can manoeuvre through the political leaders and in this regard, a reference has been made to the aforesaid joint representation of six students, the copy of which has been placed on the record as Annexure-E to which the difference has been made hereinabove. It has also been stated that when the political pressure did not work, ultimately, the petitioners thought it fit to file the present petition.

6. It would thus appear that the claim of the petitioners has been sought to be traversed through the affidavits-in reply which have been filed by the Board. The students have denied the allegations and the Board has come with the case that the explanation furnished by the petitioners are all factually incorrect and that the case set up by the petitioners before this Court is blended with more than one afterthoughts. On behalf of the petitioners it has been stated that in fact, there was a chaos when the Examination Hall was visited and at that time, the examinees had started throwing the books away in order to save themselves. The petitioner in Special Civil Application No. 4686 of 1999 has stated that one of such books landed near his feet and on that basis he was caught involved whereas, the petitioner in other case, i.e. Sunny Chaudhari in Special Civil Application No. 4045 of 1999 has come with the case that the allegation is absolutely wrong and it has also been stated on his behalf that even before the petitioner started answering the paper, the Supervisor in the class room announced that the vigilant squad had arrived and that it would search the students for any hidden material and if anybody is having any material, the same should be thrown out immediately. Mr. Oza has produced the relevant files before this Court and has submitted that both these petitioners had admitted the allegation in their own handwriting in the Examination Hall. The petitioner Sunny Chaudhary has mentioned that the book on Musie was found from him and while

he was writing, the squad officer came and took over the book. This writing in the hand of the petitioner himself has been signed by him and on the booklet also the name along with the seat number of this petitioner Sunny Chaudhary is written in his own hand. In the case of the other petitioner, namely, Sushant Chopra, similar file has been shown by Mr. Oza in which it has been mentioned in the handwriting of the petitioner himself that a book of Sangeet was with him, while he was writing, the squad officer came and took away the book. On this basis, it has been argued on behalf of the Board that both the petitioners were caught red handed and whereas they used unfair means in the Examination Hall, according to the code of penalty which is in force from October 1991, they were visited with the punishment of cancellation of their examination. It is submitted that the act of these two petitioners falls within Item No. 6 of the type of unfair means, i.e. possession of any booklet and for which the maximum penalty is cancellation of the Examination and debarring them from appearing in four future Examinations, but a lenient view has been taken in this case in exercise of the powers under Note 4 in the same Code of Penalties wherein it has been mentioned that the punishment mentioned against the items of the use of unfair means is the maximum punishment and the Examination Committee may recommend lesser punishment also. Mr. Oza has made reference to Section 17(33) of the Gujarat Secondary Education Act, 1972, Regulation No. 47 of the New Secondary School Certificate Examination Regulations, 1975, Regulation No. 8 of the Gujarat Secondary Education Regulations, 1974 as also to the Code of Conduct issued by the Gujarat Secondary Education Board, Gandhinagar, with regard to the Secondary School Certificate Examinations and Higher Secondary Certificate Examinations for preventing the use of unfair means. However, the procedure to be followed in such cases has not been made available. Learned Counsel for the Board had himself made reference to Section 17(33) of the Gujarat Secondary Education Act, 1972 which empowers the Board to deal with, according to the prescribed procedure, cases of use of unfair means in relation to the Secondary School Certificate Examination and other examinations or administration of a registered school. However, Mr. Oza has submitted that u/s 17(33), no procedure has been prescribed as such. At this stage, the further dictation of this order is deferred till tomorrow, on the request of Mr. Oza who says that he may still be given time to produce the prescribed procedure u/s 17(33).

22nd July 1999 -- Dictation was again deferred till tomorrow on the request of Mr. Oza, learned Counsel for the Board.

23rd July 1999.

Mr. Oza has produced the Minutes of the Examination Committee dated 17th July 1989 to show the procedure.

7. If we examine the scheme of the Gujarat Secondary Education Act, 1972, it is found that Section 17 provides for the powers and duties of the Board. Section 17(33) reads as under :

" 17. Subject to the provisions of this Act, the powers and duties of the Board shall be as follows, namely :--

.....

.....

(33) to deal with, according to the prescribed procedure, cases of use of unfair means in relation to the Secondary School Certificate Examination and other examinations or administration of a registered school :"

I called upon Mr. Oza appearing for the Board to answer as to whether there is any prescribed procedure to deal with the cases of use of unfair means in relation to the Secondary School Certificate Examination and other examinations, but Mr. Oza has replied that this relates to the use of unfair means by the management or the staff of such schools and it has nothing to do with the cases of use of unfair means by the examinees appearing in the Secondary School Certificate Examination. I do not find any justification for this interpretation as has been sought to be put forward by Mr. Oza. The cases of use of unfair means in relation to the Secondary School Certificate Examination would certainly include the cases of use of unfair means by the examinees appearing in such examination and, therefore, it is certainly the duty and function of the Board to deal with the cases of use of unfair means by the examinees in the Secondary School Certificate Examination. This Section 17(33) requires such cases to be dealt with in accordance with the prescribed procedure. The word, "prescribed" as it has been defined in Section 2(n) is as under :

"2. In this Act, unless the context otherwise requires :--

.....

.....

(n) "prescribed" means prescribed by regulations;"

So far as the regulations are concerned, the Board has been empowered to make regulations u/s 53 and it is provided in Section 53(1) that the Board may make regulations for the purpose of carrying into effect the provisions of this Act. The matters for which the regulations have to be framed are enumerated in Clauses (a) to (1). In these Clauses (a) to (1), the item of the use of unfair means by the examinees has not been specifically set out, but item No. (1) which speaks of any other matter which is to be or may be prescribed under this Act is in the nature of residuary clause and in any case it has to be agreed at all hands that it is the Board's duty and function to take care of the cases of use of unfair means and to prescribe the procedure in respect of the same. Therefore, in accordance with the provisions of Section 17(33), read with Section 53(1)(1), the Board may certainly frame the regulations in this regard, but so far as the regulations are concerned, all that has been placed before this Court by learned Counsel Mr. Oza are the Gujarat Secondary Education Regulations, 1974 and the New Secondary

School Certificate Examination Regulations, 1975. So far as the Gujarat Secondary Education Regulations, 1974 are concerned, they were framed by the Government in exercise of the powers conferred u/s 54 of the Gujarat Secondary Education Act, 1972 and they are essentially the first regulations as contemplated u/s 54 to be made by the State Government and they would continue in force until new regulations are made and sanctioned under that Section. The New Secondary School Certificate Examination Regulations, 1975 came into force in November 1975 and Regulation No. 47 of these New Secondary School Certificate Examination Regulations, 1975 reads as under :

"47. Penalty for acts of misconduct of a candidate in connection with the Examination.

(1) It is found that a person other than the candidate who has applied for admission to the Examination has appeared or attempted to appear at the Examination in the name of a candidate with the consent or knowledge of such candidate the result of the candidate shall be cancelled and in addition the Board shall have power to debar such candidates from appearing at the Examination for such period as the Board may determine in each case.

(2) If a candidate is found guilty of misconduct at the Examination including breach of any of the rules laid down for the proper conduct of the Examination, or is found copying or using unfair means at the Examination he shall be liable to be expelled by the Conductor of the examination at the Centre. The Conductor shall then make a report in this respect to the Secretary. If on the report of the Secretary or otherwise the Board is satisfied that the candidate is guilty of any misconduct in connection with the Examination, the Board shall have the power to cancel the result of the candidate in the Examination at which he has appeared and also to exclude him from the Examination either permanently or for such specific period as the Board may deem fit. The candidate whose result is thus cancelled and who is further excluded from the Examination either permanently or for a specific period shall also forfeit the exemptions, if any, previously earned by him under Regulation 39.

(3) If it is found that the statement of Marks of the New S.S.C. issued to a candidate by the Board under Regulation 42 or Regulation 45 respectively is tampered with or the entries made therein are unauthorisedly altered or tampered with, in any way, it shall be competent for the Board to confiscate and cancel such a statement of Marks or New S.S. Certificate and where the Board is satisfied that such unauthorised alteration or tampering has been made by the candidate himself/herself it shall also be competent for the Board to debar the candidate concerned from appearing at the New Secondary School Certificate Examination for such period as the Board may determine in each case.

(4) If it is found that a candidate has obtained by using unfair means or malpractice permission to appear at the New S.S.C. Examination under any regulation, the Board on the recommendation of the Executive Committee shall

have, power to cancel the Enrolment Certificate, the admission to the Examination, and cancel the result of the candidate in the Examination at which he has appeared and further to debar such a candidate from appearing at the Examination for such period as the Board may decide or take such action as the Board may deem fit. All the fees paid by such candidate shall stand forfeited."

This regulation deals with the penalty for acts of misconduct of a candidate in connection with the examination and all that has been provided under Regulation 47 (2) is that if a candidate is found to have used unfair means in the examination, he shall be liable to be expelled by the Conductor of the Examination at the Centre and the Conductor shall then make a report in this respect to the Secretary and if on the report of the Secretary or otherwise the Board is satisfied that the candidate is guilty of any misconduct in connection with the examination, the Board shall have the power to cancel the result of the candidate in the Examination at which he has appeared and also to exclude him from the Examination either permanently or for such specific period as the Board may deem fit; the candidate whose result is thus cancelled and who is further excluded from the examination either permanently or for a specific period shall also forfeit the exemptions, if any, previously earned by him under Regulation 39. A reading of this regulation makes it amply clear that no procedure as such has been prescribed. It only says that the Board has the power to impose the penalty upon the candidates who are found to have used unfair means on a report being made to the Secretary by the Conductor of the Examinations and on the report of the Secretary or otherwise if the Board is satisfied with regard to the use of unfair means by the candidates, the penalty as mentioned in Regulation 47 (2) may be imposed but how the Board shall arrive at the satisfaction and what procedure shall be followed in such cases, has not been provided, Mr. Oza then made reference to the Code of Penalties which is said to have been in force from October 1997 Examination. In this Code, in the left hand side column, the types of unfair means have been mentioned and in the right hand side, the penalties to be imposed have been mentioned against each of the type of case of use of unfair means. Mr. Oza has submitted that the present cases are the cases of type No. 6 and according to this Code of Conduct, the corresponding penalty as prescribed is the cancellation of the Examination and further debarring the candidates from four Examinations. Reference was then made to Note No. 4 below this Code of Penalties according to which the Examination Committee may recommend the lesser punishment also.

8. Besides this, a copy of the Code of Conduct was also produced by Mr. Oza which contains certain instructions for prohibition of the cases of use of unfair means in the Secondary School Certificate Examinations and Higher Secondary Certificate Examinations. Instruction No. "Ka (4)" says that if an examinee who appears to have used unfair means during the course of the examination, his seat number is required to be mentioned on the material which is found in his possession and his signatures are to be obtained thereon and his version has to be recorded in the prescribed form and it has to be mentioned on the answer

book that "caught while using unfair means" and his signatures are also to be obtained and after marking at the end of the answers given by him till that stage when he is caught while using the unfair means, two lines are to be drawn mentioning the point of time and then the answer book is to be given back to the student for further answers. After the examination is over, the case of the unfairness is to be prepared with respect to each examinee and it has been provided that the following material is to be included :

- (1) The statement of the examinee.
- (2) The report of class supervisor in the examination hall.
- (3) The report of the person who has detected the case of use of unfair means.
- (4) The material which was used for unfair means bearing the signature of the class supervisor.
- (5) The answer book of the candidate.
- (6) The report of the conductor/chief conductor and each of such cases are required to be sent to the Board.

It was submitted by Mr. Oza that the Examination Committee has the powers to deal with such cases. Mr. Oza also made reference to the Minutes of the Examination Committee dated 17th July 1989 and with reference to these Minutes, he has submitted that the Gujarat High Court had passed an interim order dated 15th July 1989 in Special Civil Application No. 4068 of 1989, 3949 of 1989 and 3960 of 1989 and thereafter the Examination Committee decided to follow the procedure of giving notice and hearing to the students who are found to have used unfair means and since then the Examination Committee has been following the said procedure. He has submitted that this procedure as adopted by the Examination Committee has been followed in the present cases also and he has also produced the record relating to the cases of the petitioners' examinations and the relevant answer books to show that in the examination hall they had themselves admitted that they had used unfair means and further that even thereafter, the notices had been given for giving written reply and through the same notice they were also informed to appear for the personal hearing and after giving the personal hearing, the orders have been passed. Thus, the analysis of the relevant provisions, regulations etc. to which the reference has been made by Mr. Oza shows that no definite procedure as such has been prescribed or laid down through the regulations for this purpose, but Mr. Oza has submitted that even if the procedure is not prescribed through regulations, the requirement of following the principles of natural justice has been adhered to on the basis of the procedure adopted by the Examination Committee and the procedure which has been followed in these cases do not violate the principles of natural justice in any manner, the reasonable opportunity has been afforded and according to Mr. Oza when the candidates themselves had given in writing in

their own hand writing in the examination hall itself that they had used unfair means and further the material which has been found from their possession is also available on which they have written their names with seat number and thereafter their representation has been considered and the personal hearing has been afforded, no grievance whatsoever can be raised before this Court that they were not afforded a reasonable opportunity.

In the form of material which is available in these cases is the so called admission said to have been made by the concerned petitioner in the examination hall itself and the booklet bearing the name of the concerned candidate with seat number. So far as the admission as such is concerned, the case which has been put forward on behalf of the petitioners is that in such cases when the minor students of the age of 15 to 16 years are facing the examination and any such team or squad visits the examination hall, the examinees feel scared and in cases when the news with regard to the visit of the team or squad alarms, the chaos is created in the examination hall and it has been submitted that in the present case, at the time when the team visited, the students started throwing the booklets and the team which visited and detected the cases caught hold of those boys near whom such booklets were found and such material had actually thrown by other students which fell near them and therefore, innocent examinees like the petitioners have been caught involved and merely because they have given in writing in the examination hall under their signatures that a booklet of music was found from them, the same cannot be taken as the proof of guilt against them so as to make the basis for the punishment. It has been submitted that in case the examinees do not record such admission under their signatures they are asked to leave the examination hall then and there and in such an atmosphere being threatened of being thrown out then and there without appearing further in the examination, they are left with no option but to follow the dictate which is given to them by the members of the team or the squad or the administrator or the class supervisor etc. and therefore, such a writing, the so called admission cannot form the bedrock of their guilt. Name and seat number are required to be written on the material (booklet) as a part of procedure as per the Board itself. It has been then pointed out that the notice which was given in the instant case cannot be said to be a proper notice inasmuch as the prescribed forms were sent to the Principal in which the petitioners were required to answer in "yes" or "no" and a demand for personal hearing. The notice dated 9th April 1999 which is said to have been given by the Principal recites a bald charge that the petitioners were caught with a booklet of music with 14 pages in one case and with 16 pages in another case. Before the Examination Committee, one of the petitioners, i.e. Sunny Chaudhary in Special Civil Application No. 4045 of 1999 has stated that while he was answering the question paper at about 11 O' Clock, the squad persons came and the class supervisor told that if any candidate is having any booklet, sheet or chit etc. they may throw it away. He says that he was sitting near the window and at that time students started throwing such material and one of the booklets fell near him

and therefore, he gave it to the members of the squad. The members of the squad went away with that booklet and after some time, some other person came and forcibly prepared the case and there is no mistake on his part. In other case, the petitioner Sushant Chopra in Special Civil Application No. 4686 of 1999 has stated before the Examination Committee that in the prescribed form in the explanation, his handwriting is there but the version is not his. The concerned booklet does not belong to him. The version was got written by him forcibly.

9. In Special Civil Application No. 4045 of 1999 in the further affidavit-in-rejoinder dated 19th July 1999 in para 3 thereof with regard to the proceedings held before the Examination Committee, the petitioner has stated as under ;

"On 23-4-99 when the petitioner went for hearing nearly 490 students who were also called for hearing on the same day at 12.00 O'clock were present. The petitioner was given to understand that the hearing would commence at 12.00 O'clock and accordingly he reported at 12.00 O'clock-490 students who were to be heard in connection with the irregularities were divided in 4 groups, as per their examination code number. Students belonging to Group D were heard first. The petitioner and other students belonging to Group A were heard in the end. The hearing started at around 1.00 p.m. The members of the committee took a small break in between. The petitioner who was heard in the end reached his turn at around 2.45 p.m. and the hearing in respect of all the 490 students ended at 3.15 p.m. At the time of hearing the parents of the students were not permitted inside. All the 7 members were sitting in a line on a long table and across each member one chair was placed. 7 students were sent in simultaneously and all the 7 were heard simultaneously by one member. In other words, 7 members heard 7 students. The student who was being heard by one member was not heard by other 6 members of the Examination Committee. As regards the petitioner he was heard by Member Shri Praful Bhatt only and was not heard by the other members of the Committee. The petitioner was asked whether he pleads guilty to the allegation of irregularities whereupon the petitioner denied that he was guilty and tried to explain as to how incident occurred. The member who was hearing the petitioner was not receptive and the petitioner was asked to give his submission in writing. The petitioner thereupon gave in writing detailed account of the events of the day on which he was allegedly caught copying during the music examination. All the aforesaid details which are narrated hereinabove and in the petition have been given in writing to the Member who heard the petitioner."

Thereafter on behalf of the Board, an additional affidavit dated 21st July 1999 has been filed in which in paragraph 5, at page nos. 34 and 35, on behalf of the Board it has been stated as under :

"I further say that the petitioner was called before the examination committee which has power to take action. On 23-4-99 the hearing was held for such students at Govt. Girls High School, Raykhad, Ahmedabad and following 5 members of the examination committee were present : (1) Mr. Kanaksinh Rana

(2) Mr. Sukhdevsinh Vansia (3) Jagmalbhai Maru (4) Pravinsinh J. Rana and (5) Mr. Prafulbhai Bhatt. The Committee members have heard the students and then have taken the decision. The formation of the examination committee has been contemplated in Rule 10 of the New Secondary School Certificate Examination Regulation, 1975 and as per this provision no other person including myself can be a member of examination committee. I have never taken part while the impugned decision was taken. The committee has communicated the decision to me. At the time of hearing the Chairman and Vice Chairman of the Board were also present. Under the circumstances there is no substance in the averments made in para 3 which are contrary to the facts which have been stated hereinabove by me and I deny the same."

This Court therefore finds that there is no denial by the Board that seven students were heard simultaneously by the members of the Examination Committee i.e. each one student before only one member of the Examination Committee.

10. In the facts of these cases, two questions arise for the consideration :

(1) Whether the petitioners have been given reasonable opportunity before passing the impugned orders in the facts and circumstances of these cases.

(2) Whether the material on the basis on which the impugned orders have been passed could be said to be a material sufficient to establish the guilt of the students for the purpose of passing the impugned orders and as to whether it is a case of no evidence.

So far as the question of opportunity is concerned, Mr. Oza has submitted that it was a case in which the petitioners were caught red handed firstly and secondly he has submitted that possession of any unauthorised material from the examinee in the examination hall by itself is sufficient to constitute a case of use of unfair means and in this regard, he has placed reliance on the case of Central Board of Secondary Education v. Vineeta Mahajan reported in (1994) 1 Guj LH 71. There cannot be any dispute about the position that the possession of an unauthorised material with an examinee by itself constitutes a case of use of unfair means. However, the question which arises in the facts of this case is as to whether the booklet which bears the signatures of the petitioners were obtained in the examination hall along with the seat number as a part of Board's procedure were actually in the possession of the petitioners or not? No doubt in examination hall, the petitioners have written in Form : 004 (Aa) that the booklet was found from their possession and they have also appended their signatures beneath such writing, whether such a writing in the prescribed form by a minor facing examination and the possibility of being thrown out from the examination hall then and there can be placed at the pedestal of "admission"? In such cases when the exami- nees of tender age give such answers, such admission, cannot be sufficient for the- purpose of penalising the students more particularly when they are contesting that in fact such writing was obtained from them under

duress and forcibly. They have also come with the case that when the squad came, there was an announcement by the supervisor to throw away the unauthorised material and number of students in the examination hall started throwing the booklets or unauthorised material and merely because such material has by chance, landed near the petitioners, they cannot be made to be punished. A voluntary admission made without any fear may be queen of evidence, but such an admission as has been made by the tiny boys in the facts of the present case, could not be made the basis for punishment. This basic fact of possession of unauthorised material by the petitioners is itself doubtful in the facts of the present case and therefore, it cannot be said with required certainty that the petitioners were in fact possessed of the unauthorised material in question and the law in this regard has been discussed with reference to the admissions in the case of use of unfair means by the Supreme Court in the case of Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, . In paragraph 11 of this case, the Supreme Court has categorically observed that the effect of the decision of the Committee may in an extreme case blast the career of a young student for life and in any case will put a serious stigma on the examinee concerned which may damage him in later life. The nature of misconduct which the Committee has to find in such cases is of a serious nature, for example, impersonation, commission of fraud, and perjury, and the Committee's decision in matters of such seriousness may even lead in some cases to the prosecution of the examinee in Courts. Considering therefore, the serious effects following the decision of the Committee and the serious nature of the misconduct which may be found in some cases, the Supreme Court observed that the Committee must be held to act judicially in circumstances as these. There is nothing express one way or the other in the Act or Regulations casting a duty on the Committee to act judicially, the manner of the disposal, based as it must be on materials placed before it, and the serious effects of the decision of the Committee on the examinees concerned, must lead to the conclusion that a duty is cast on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees, before it can take any action in the exercise of its power. The Supreme Court, therefore, expressed the opinion that the Committee when it exercises its powers under Regulation 1 (1) is acting quasi-judicially and the principles of natural justice which require that the other party, namely, the examinee in this case, must be heard, will apply to the proceedings before the Committee. In the present case, apart from the reply which was given by the petitioners in the examination hall in Form 004(Aa) with the material in question were available along with the version which they gave before the Examination Committee on 23-4-99 in the Box Form as "Nivedan". This version was required to be considered by way of sifting with the earlier version coupled with the totality of circumstances but it appears that such a consideration has not been given. Besides the manner in which the vague and bald notice has been given without any specific details therein, the manner in which the hearing has been given by members of the Examination Committee as

alleged and replied as reproduced in the earlier part of this order, it is clear that the entire Examination Committee has not considered this question and the matter has not been considered objectively and with the seriousness with which it was required to be considered. If the members of the Committee had bifurcated themselves to hear examinees and only one of the members called one candidate and asked him to give his version ("Nivedan") in the form that does not and can never mean a hearing by the whole Committee. If $A+B+C+D+E+F+G = \text{Committee}$, "A" alone cannot be taken to be the Committee. If the Examination Committee is the decision taking body, there must be a hearing by all the members of the Committee and the decision taking process must involve the collective application of mind by all the members of such Committee and this is what is precisely found to be lacking in these cases. May be that the Examination Committee in a given case may come to the conclusion on the basis of the earlier version given in the examination hall coupled with the replies and the reports made by the supervisor etc., but in the instant case when only one of the members of the Committee has heard a particular candidate and there has been no Joint application of mind put by the members of the Examination Committee and the view of only one member has been taken to be the view of all the members of the Committee, the decision stands vitiated and it cannot be said that reasonable opportunity has been given in the facts of this case. The reasonable opportunity in such cases would mean a real and effective opportunity before the Examination Committee. Once the Board has decided that the Examination Committee will consist of 7 members, then all the 7 members have to supply their mind jointly and not in parts. Merely because there are large number of cases of this nature which according to the petitioners are 490, but according to the Board only 168 and even if there are 168 cases. The same should have been considered by the Committee as a whole and not by a single member to call one candidate before him and divide the total number of candidates in different groups to be heard by each member of the Committee. Thus, it is clear even according to the procedure which is required to be followed by the Board that there was no hearing by the Committee as a whole, that is to say, by all the members of the Committee, but the hearing has been given only by one of the members. Mr. Oza has also placed reliance in this regard on the case of *Rajesh Chandulal Purohit Vs. Saurashtra University and Others*, . In this case, the Division Bench of this Court was concerned with the question as to whether even non-supply of the report of the observer to the delinquent student, the prejudice has been caused or not and the Court found that breach alleged was in respect of the procedural provision other than that of fundamental nature and violation of procedural rule framed in the category of no proper hearing and in absence of prejudice caused, the action of the University was held not to be liable to be quashed on the ground of principles of natural justice. In the instant case, so far as the question of prejudice is concerned, it may be pointed out in the first instance that the very fact that the hearing was not afforded by the Committee as a whole itself is a serious prejudice for the simple reason that in such cases, one of the members who hears the matter may

take his own independent decision whereas when all the members of the Committee hear the matter jointly and take a decision, such decision may be different. To make it more clear, any one officer or authority himself may come to a different conclusion whereas the case in which the decision is taken by a body after hearing the matter with application of mind and meeting of minds of all the members of the Committee, such decision may be different and, therefore, it cannot be said in the facts of the present case that the denial of hearing by all the members of the Committee and the hearing by only one of the members of the Committee has caused no prejudice to the petitioners. Besides this, it has also been the case of the petitioners that the report which was made by the class supervisor was not made available to the examinees nor the report of the person who said to have detected the candidate was given nor the report of the building conductor was given and thus, the decision which has been taken against the petitioners is based on undisclosed material which was not supplied to them whereas such items do find place in the instructions to which reference has already been made in the earlier part of this order in para 8 on which reliance has been placed by the Board itself. I, therefore, find that it is a case in which the reasonable opportunity has not been granted. Merely because all the members have placed their signatures on the cover of the case file would not show that the entire Committee had heard the delinquent examinee. The petitioners' specific allegations in this regard as have been quoted in the earlier part of this order have not been controverted on behalf of the Board and the pleadings of both the sides in this regard have been quoted in the earlier part of this order only to evidence factual position as per the pleadings.

11. Mr. Oza has also cited the case of *Madhyamic Shiksha Mandal, M.P. Vs. Abhilash Shiksha Prasar Samiti and Others*, . It was a case of mass copying and the students had been found copying with impunity even before the distribution of question papers and what was considered by the Supreme Court is as to whether the interference was warranted in such case on the technical ground that valuer's report was subsequent material. The Supreme Court found that the interference on such a technical ground that Valuer's report was subsequent material in the facts of the case was improper. This case has no relevance so far as the facts of the present case are concerned and the same is not at all applicable to the facts of the cases at hand.

12. So far as the question of material in this case is concerned and the question which has been raised by the petitioner that it is a case of no evidence, reliance has been placed on a decision of this Court in the case of *Siddharth Mohanlal Sharma Vs. South Gujarat University*, . In this case, the Division Bench of this Court has considered the question of no evidence. According to the Division Bench, for the purpose of a case of no evidence, its content need not be construed narrowly. For attracting Rule of no evidence, there may be complete lack of evidence or evidence if any, must be incapable of having any probative value. Both these cases are at par and mere suspicion out of bounds in domestic inquiry and if evidence does not meet with this test, decision may be quashed

under Article 226. In the facts of the present case, the basic evidence is the petitioner's reply in Form 004(Aa) in his own hand writing in the book in the examination hall under their signatures and the alleged booklets which are alleged to have been found from them on which their names are written at the time when they were detected along with the seat numbers as a part of procedure. Now applying the principles of no evidence as has been laid down in this case by the Division Bench of this Court, it has to be seen whether this material can be said to be of any probative value in the circumstances in which the cases have been detected. It is the case of the Board itself in the additional affidavit dated 21st July 1999 of the Director of Examinations Dr. Ishwarbhai M. Patel in paragraph 4 thereof that in the Control Room of the Board, a message was received on phone that at the Centre of Gandhinagar Govt. School copying is taking place and that the Vice Chairman of the Board has directed him to visit the Centre. He then says that, he had visited the centre and announced that if any candidate is having material pertaining to the subject should surrender to the block supervisor and in spite of this warning, the petitioners did not surrender the material which has been found from them and that in all, there were six students who were caught from different blocks (class rooms). These averments made by none else than the Director himself clearly show that the copying v/as going on in this Examination Centre and it has also become clear that an announcement was made that if any candidate is having material pertaining to the subject should surrender to the block supervisor. Now, when making of such an announcement is admitted, the case with which the petitioners have come that on an announcement being made, the students started throwing the materials that one of the petitioners was sitting near the window where such a material fell and they have been caught involved cannot be discarded and disbelieved. The explanation is rather plausible and probable. The evidence, i.e. such material in the facts as stated above and admitted by the Director of Examinations himself can not inspire confidence so as to say that such material will form an evidence of any probative value and merely because the students have appended their signatures and the admission has been recorded-in the examination hall itself, such an admission cannot be of any probative value. Besides this, it also does not appeal to the reason that in such cases, the student who is having any such booklet with him would not part with the same even if an announcement is made in the Examination Hall that those candidates having the material should surrender to the block supervisor. It, therefore, appears to be natural in such a case that either the student who is having such a material would hand it over to the supervisor and if the student is more clever, he may try to throw away so that he is not detected or does not render himself liable to be punished or subjected to any further action. To lend strength to the reasoning as aforesaid, the following passage be quoted from paragraph 30 of Siddharth Mohanlal Sharma Vs. South Gujarat University, , decided by the Division Bench of this Court:

".....Mere suspicion, even if honestly and bona fide entertained on the basis of

apparently cogent circumstances, was held to be out of bounds even in domestic inquiries, where the principle that in punishing the guilty scrupulous care must be taken to see that the innocents are not punished, was found to apply as much as it applies to regular criminal trials. In the ultimate analysis, the test which appears to have been applied is whether there was some material capable of having any evidential value."

13. The Board's case that the petitioners tried to bring political pressure upon them and that, such a course of action was not proper for the petitioners to follow does not commend to the instrumentality like the Board itself. Merely because the petitioners had made a representation to the Chairman of the Board and copies thereof had been sent to the Chief Minister and others as per the endorsement on that representation, it cannot be said that they have tried to influence the Board for the purpose of getting an order in their favour. The allegations in this regard as have been made by the Board are at page No. 23 internal page 3 of the affida-vit-in-reply filed by Mr. P.U. Vyas, Secretary, Gujarat Secondary Education Board, dated 30th June 1999, which is reproduced as under :

"At this stage it is also required to be pointed out that petitioner's parents have tried to pressurise the Board by political means to maximum as if they felt that they can manoeuvre through the political leaders. A copy of the representation produced at Annexure.B p. 13 addressed to the Chairman has been forwarded to the Chief Minister, Education Minister and the Secretary Education Department which is one of the glaring evidence to show that the petitioner's parents have tried to influence and pressurise the Board by politicians. They tried even by personal meetings and by telephone to pressurise highest officers of the Board. This practice is required to be deprecated because the respondent Board is statutory autonomous body constituted under the Gujarat Secondary Education Act. Nobody should feel that through the political means and pressure they can achieve anything in examination. When political pressure did not work, ultimately the petitioner thought it fit to file the present petition. In view of this also the petition is required to be rejected."

In this paragraph, neither the name of any parent has been given nor there is any reference as to by what political means and through which political leaders the manoeuvre was sought to be made. The names of the political leaders have not been given. Who was that political leader who contacted any functionary of the Board has not been given nor any dates have been given in this regard. No reference has been made to the person who made telephone and pressurised the highest officers of the Board and yet it has also been submitted that the practice is required to be deprecated. No one can commend if anybody follows such a practice, but in order to deprecate such a practice in a particular case, the specific allegations are required to be made. The allegations of the Board as have been quoted above are absolutely vague and bald. No particulars or details have been given about any person nor about the officers of the Board itself who were

contacted on telephone or in person nor the names of any political leaders have been given nor the names of the parents have been given nor the date, time and place of such meetings or telephones have been given and in want of such details for the purpose of deprecating such practice, there is total lack of material before this Court and the only material to which the reference can be made in this regard is the representation made by the petitioners to the Chairman of the Board, the copy of which has been sent to the Chief Minister, Education Minister, Secretary to the Education Department and the Examination Secretary of the Board. Merely because the copies of the representation were sent to the Chief Minister and others by the candidates and that too in a joint representation, it cannot be said that any political interference has been sought in this matter and if the Board says that a lenient view has been taken by cancelling the present 1999 Examination of the petitioners and that they have not been debarred from any further examinations, is according to the Board itself, within the powers of the Examination Committee and if it comes to the conclusion that the Examination in question was liable to be cancelled and they were not required to be debarred in future, it cannot be said that such punishment could be given when neither the reasonable opportunity has been afforded nor there was any evidence of probative value so as to punish them.

14. The upshot of the adjudication as aforesaid is that these two Special Civil Applications succeed. The impugned order dated 5th June 1999 at Annexure.F, page No. 16 in Special Civil Application No. 4045 of 1999 and the order dated 5th June 1999 at Annexure.A at page No. 13 in Special Civil Application No. 4686 of 1999 are hereby quashed and set aside. Mr. Oza had also submitted that in case the orders are set aside on the ground of violation of the principles of natural justice, the matters maybe remanded back for inquiry. In the facts of the present case, when this Court has come to the considered conclusion that the material on the basis of which the punishment is given is not of any probative value and virtually it is a case of no evidence, this Court does not find it to be a fit case even to remand the matter. Even otherwise in such cases, the careers of young students cannot be put to any prejudice at the altar of the repeated inquiries when the students have been found to be punished on the basis of the material of no probative value. The request for remanding the matter for inquiry again is, therefore, declined. Therefore, the quashing and setting aside the orders by which the examinations of the petitioners have been cancelled has to follow the direct and legal consequences for the declaration of their result of the Examination of Xth Std. in which they have appeared and the cancellation of which has been found to be illegal. The petitioners cannot be denied the fruits of the labour put in by them and therefore the respondent Board is directed to declare the result of the present petitioners within a period of 15 (fifteen) days from today and it is also ordered that in case the petitioners are successful at this Examination of Xth Std. they will also be considered for the purpose of admission to XIth Std. in the respective institutions and would not be made to suffer any prejudice on account of delayed declaration of the result because of

the impugned orders passed by the Board and because of the pendency of these matters and they will also not be put to any disadvantage in the matter of attendance in the next higher class. If any of the petitioners fail in any subject/ subjects, he has to face all legal consequences but even if he has to repeat he will not be put to any prejudice on account of the attendance or otherwise with regard to the passage of time on account of this litigation. Both these Special Civil Applications are allowed accordingly. The Rule is made absolute in the terms as aforesaid. No order as to costs.

15. Mr. Oza has submitted that this order be stayed. In the facts and circumstances of this case, when the academic session has already started and the students may suffer further in case of any more delay. I do not find it to be a fit case to stay this order. The request for staying this order is hereby declined.