
(2019) 11 BOM CK 0017
In the Bombay High Court
Case No : Writ Petition No. 8103 Of 2019

Swarnim Sachin Chingre

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 08-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 136, 226

Citation : (2019) 11 BOM CK 0017

Hon'ble Judges : S.V. Gangapurwala, J;Anil S. Kilor, J

Bench : Division Bench

Advocate : P.F. Patni, Surekha Mahajan, S.B. Yawalkar

Final Decision : Dismissed

Judgement

Anil S. Kilor, J

1. The petitioner Swarnim a 12th standard student (Science stream), by the present petition is endeavoring to save her three precious academic years by calling in question the legality and correctness of the impugned decision of Maharashtra State Board of Secondary and Higher Secondary Education (For short 'the Board'), canceling her March 2019 examinations and debarring her from appearing up to July 2021 examination, on the ground of misconduct.
2. Heard the learned counsels Shri P.F.Patil for the petitioner, Ms. Surekha Mahajan for the Board and AGP for the State.
3. The brief facts which are necessary to decide the issues involved in the present matter, are narrated herein below. The petitioner appeared for the 12th standard final examination conducted by the Board, in the month of March 2019. On 12th April, 2019, the Board called explanation from the petitioner in relation to the difference in handwriting as well as difference in pen and ink noticed by the Board in the answer sheets of the petitioner. The petitioner on the same day submitted her explanation in addition to her specimen handwriting to demonstrate that while writing she uses 'cursive' as well as 'print' font and in this

way she admits difference in handwriting with a defence that the alleged difference in handwriting is of the petitioner herself. The petitioner further admits difference in pen and ink with a plea that her pen ran out of ink at the time of writing answers, therefore, she changed the pen. The Board conducted the inquiry under provisions of the 'Maharashtra State Board's Procedure for Inquiry', through the Enquiry Officer. On 28.5.2019, the Board declared online result of 12th standard examination. With regards to petitioner's result, the Standing Committee of the Board, took a decision to withhold the result of petitioner and to prohibit her from appearing upto July 2021 exam. Consequently on the joint request of the petitioner and her father, the Standing Committee reviewed its decision, but not recalled and maintained the same.

4. Mr. P. F. Patni, learned counsel for the petitioner points out that the petitioner is a meritorious student and had secured 85.80% marks in 10th standard Board examination. There was no complaint of any misconduct committed by the petitioner during 12th standard final examination, by invigilator or college authorities. He submits that on 12th April, 2019, the petitioner tendered her plea of defence along with specimen handwriting as regards alleged misconduct, however it was not considered by the Board whilst taking the impugned decision.

5. Mr Patni further asserts that the petitioner and her father jointly submitted a request letter for review of impugned decision, inter alia pointing out that it is a well recognized principle relating to signature and handwriting that no signature and handwriting made on two different occasions would be the same. He submits that the said well recognized principle has not been considered by the Board. He further submits that the inquiry as regards whose handwriting it is, which does not match with the handwriting of the petitioner, ought to have made by the Board. He argues that no adequate opportunity was provided to the petitioner to defend herself by granting her hearing, therefore, the impugned decision of the Board is erroneous and needs to be set aside. In alternative he urges that the quantum of punishment is disproportionate.

6. The learned counsel Mr. Patni in support of his contentions, relied on the judgments in the cases of Rajesh Kumar -vs- Institute of Engineering (1997) 6 SCC 674; W.B. Council of Higher Secondary Education -vs- Roushanara Momtaz AIR 1991 Calcutta 310; Prasadha Kismatkumar Trivedi -vs- Principal, Sarvajanic College of Engineering AIR 2000 Gujrat 244; Shaikh Shafaque Anjum -vs- University of Mumbai 1999 (3) Mh.L.J. 1; Bharat Ghanshyam Chhabada -vs- Maharashtra State Board 2015 (4) Mh.L.J. 611 and Rakesh Balasaheb Landge -vs- Maharashtra State Board 2012 (5) Mh.L.J. 849.

7. Per contra, Ms. Mahajan, learned counsel for the Board, craves our attention to the fact that the Board on noticing the alleged misconduct, entrusted the inquiry to the inquiry officer. Accordingly the petitioner submitted her explanation during the inquiry. However the Standing Committee which is a statutory body, did not find favour with the explanation tendered by the petitioner and took the impugned decision.

8. She further argues that the Standing Committee reviewed its decision on the request of the petitioner and her father, however did not find any error in its decision. She states that the petitioner did not make any request for grant of personal hearing for which she could have made as per procedure of inquiry, as such now it is not open for her to say that principles of natural justice, are not followed. According to Ms Mahajan procedure for inquiry stipulated under procedure for inquiry, was scrupulously complied with and adequate opportunity was given to the petitioner to defend herself.

9. Ms. Mahajan on jurisdiction of this Court, contended that when the evidence justified the Standing Committee's findings about alleged misconduct, it is not open for this court under Article 226 to interfere with the finding and quash the impugned decision. She argues that in such matters no strict rules of Evidence Act, and the standard of proof, can be made applicable and only the circumstantial evidence would furnish the proof. To fortify her argument she placed reliance upon the judgments of the Hon'ble Apex Court in the cases of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and others reported in (1991)2 SCC 716 and Council for Indian School Certificate Examination Vs. Isha Mittal and another reported in (2000)7 SCC 521 and Ram Preeti Yadav Vs. U.P.Board of High School and Intermediate Education and others reported in (2003) 8 SCC 311. She also relied on the judgment of this Court delivered in the case of Umesh Vithalrao Balpande and anr. Vs. Maharashtra State Board of Secondary and Higher Secondary Education, Nagpur reported in (1991) Mh.L.J 1510.

10. On appreciation of the rival contentions of the parties we have reached to the conclusion that there is no merits in the present case in view of the discussions made henceforward. The Board is constituted under the Maharashtra Secondary and Higher Secondary Education Board Act of 1965 ('the Act for short'). The Board is empowered to make regulations to conduct examination and to deal with the use of unfair means at the final examination. In the matter of Maharashtra State Board -vs- K.S. Gandhi (Supra), the Hon'ble Apex Court had an occasion to examine whether the Standing Committee has power under the Act and Regulation to inquire into the use of unfair means committed at the final examination. The Hon'ble Apex Court has observed thus:

19. Thus it is clear that the State Board is empowered to constitute the Divisional Boards and the Standing Committees. The State Board is also empowered to make regulations to conduct examinations and also to deal with the use of unfair means at the final examination conducted by the Board. The Divisional Board is empowered to conduct within its area the final examinations on behalf of the State Board. The Divisional Board is also empowered to deal with the cases of unfair means according to the procedure laid down by the State Board.

25. By a resolution passed at the meeting of the State Board held on October 26, 1985, Ex. 'Z' provides the procedure for enquiry. Clause 3(f) defines 'misconduct' as follows:

26. "3.(f) 'Misconduct' shall mean any illegal or wrongful act or conduct which is alleged to have been resorted to by any candidate and/or any member of staff, at, for or in respect of the final examination and, without prejudice to the generality of the foregoing, shall include..... tampering with the documents issued by the Board or otherwise howsoever changing a candidate's results in any manner whatsoever and generally acting in such a manner so as to affect or impede the conduct of the final examinations and fair declaration of results thereof."

27. Clause (4) empowers to conduct an enquiry either suo moto or on a complaint about any misconduct and the procedure in that regard so that the Chairman of the Divisional Board may entrust the enquiry into the alleged misconduct to any member or members of the Divisional Board other than the members of the Standing Committee. Clause (5) empowers to entrust the enquiry. The Enquiry Officer shall give a notice in writing to the candidate setting forth the nature of the misconduct alleged against the candidate and call upon the candidate to show cause within the time specified therein. It also empowers to set out the punishment proposed to be imposed on a candidate. Clause 5(b) gives an opportunity to the candidates to inspect the relevant documents proposed to be relied upon at the enquiry. Clause (6) gives opportunity to the delinquent to submit an explanation; to produce his witnesses as well as documentary evidence and to be heard in person, if he/she so desires, but shall not be entitled to be represented by an Advocate or any other persons. The delinquent shall be bound to answer truthfully to all questions relevant to the subject of enquiry that may be put to him/her by the Enquiry Officer. Clause (1c) provides that the concerned Enquiry Officer shall submit the report in writing including the findings and the proposed punishment. Clause 11 provides thus:

35. Thus a conspectus of these relevant provisions of the Act, regulations and resolutions clearly cover the entire field of operation regarding the use of unfair means at the final examinations, specified the competent authorities and the procedure to deal with the same. The Divisional Board undoubtedly has been empowered under Section 19 of the Act to deal with the use of unfair means at the final examination.....

The Hon'ble Apex Court further observes that -

On a fair and harmonious reading of the relevant provisions and given their due scope and operational efficiency, we are of the considered view that the Education Standing Committee of the Divisional Board, itself a statutory body, acted on behalf of the Divisional Board and is not a delegate of the Divisional Board.

11. In this matter there can't be any dispute that while exercising the powers, under Article 226 of the Constitution, this court is not sitting as a court of appeal on the findings of facts recorded by the Standing Committee, nor we have power to evaluate the evidence and to come to our own conclusion, as argued by learned counsel Ms. Mahajan. However, we also cannot be oblivious to the fact

that each academic year is precious for the students. The aftereffect of loss of a academic year is long faced. Here in this matter if the petitioner loses, she would not be able to appear upto July 2021 and it would be a loss of three academic years. Thus we thought it fit to call the record and answer sheets of the petitioner for perusal.

12. Accordingly answer sheets of the petitioner for the subjects Biology, English, Mathematics, Physics and Chemistry, were produced by the learned counsel for the Board. We found that the complete record is having chronological pagination.

13. It is the plea of the petitioner that she used 'cursive' as well as 'print' font while writing answers and during the inquiry to demonstrate the same, she tendered her specimen handwriting in 'cursive' and in 'print' font. Another defence in connection with alleged difference in handwriting was that some of the answers were written by her in hurried manner because of insufficiency of time. With regard to difference in pen and ink, her case is that, her pen ran out of ink in the halfway of examination as such she was required to change the pen.

14. We thought-through the record in the light of above explanation of the petitioner, relating to alleged misconduct. On examination of specimen handwriting, it seems that the petitioner uses 'cursive' as well as 'print' font. The specimen handwriting of the petitioner is at record page 39, the upper portion of it is in 'cursive' whereas bottom portion is in 'print' font. Thus we have specimen handwriting to match the same with the handwriting on the answer sheets of the petitioner.

15. The answer sheet of 'Biology' is at page No. 3 of the record. At pages 5, 6, 7, 15, 20, 21, 25 to 33 we found difference in handwriting, pen and ink. Similarly, answer sheet of subject 'English' at page 89 shows difference in handwriting at pages No. 102, 104, 107, 114, 117 and 120. Subject 'Mathematics' is at page 125. We found there is change in handwriting and also in pen and ink at pages No. 125 to 129, 137 to 140, 150 to 157. The next answer sheet of 'Physics' is at page No. 161. We found at many pages difference in handwriting and ink. The case relating to subject 'Chemistry' at page no. 189 is also not different.

16. We have revealed from the answer sheets referred above that there is some handwriting which does not match with specimen handwriting of the petitioner in 'cursive' or 'print' font. The alleged difference in handwriting and ink is so apparent that even no expert's opinion would require in this regard. Moreover we have noticed that the most of the questions are written in cursive font and some of the answers are written in different handwriting. The difference in handwriting as alleged is of a nature that we can not accept the argument of the petitioner on the principles of signature and handwriting that is no signature or handwriting made on two different occasion would be the same. The said principle may be applicable where the difference in handwriting is minor but certainly not to a case where difference is major like it is in the present matter.

17. We also noticed that the difference in ink is not in continuation but random

which is not possible unless answers are written on distant timings. Moreover it is not probable that at the time of exam of each subject , the pen of the petitioner ran out of ink and it was required to change.

18. One more important factor which cannot be ignored, is the marks received by the petitioner because of alleged misconduct in subject 'Biology' are 11 marks, whereas she got 12 marks for the answers in handwriting matched with her specimen handwriting. The said fact sufficiently establishes that, had the alleged misconduct not been noticed the result of the petitioner would have been changed. The above fact further elucidates that the alleged misconduct would have affected the fair declaration of result in the present matter, if it was not detected.

19. The Hon'ble Apex Court in the case of Maharashtra State Board - vs- K.S. Gandhi (Supra), has held thus -

" The standard of proof is not proof beyond reasonable Standard of proof cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries".

On careful consideration of above referred facts and well recognized legal position as regards standard of proof we have no hesitation to hold that the present case squarely falls within the compass of word 'Misconduct' as defined in procedure of inquiry. Thus we do not find any illegality in the impugned decision of the Board in holding that the petitioner has committed a misconduct in final examination of 12th standard held in March 2019, conducted by the Board.

20. The next contention of the petitioner is that opportunity of being heard was not given to the petitioner and thereby denied adequate opportunity to defend herself. As per the procedure of inquiry it is stipulated that the Inquiry Officer shall give a notice in writing to the candidate, setting forth the nature of the misconduct alleged against the candidate and call upon the candidate to show cause within the time specified therein and give an opportunity to inspect the relevant documents proposed to be relied upon at the inquiry. It also mandates to provide opportunity to the delinquent to submit an explanation; to produce his witnesses as well as documentary evidence and to be heard in person, if he/she so desires.

It is not disputed that petitioner was allowed to submit her explanation in connection with alleged misconduct. In her explanation she admits alleged difference in handwriting and difference in ink and pen, by putting forth her defence for the same as referred above, with which the Standing Committee did not find favour with. It is also not disputed that the Standing Committee revisited its decision on the request of the petitioner and her father. Thus the said facts referred above are sufficient to show that adequate opportunity as per procedure of inquiry, was provided to the petitioner to defend herself.

21. The Hon'ble Supreme Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S.Gandhi and others (supra) has observed that the applicability of the principles of natural justice is not a rule of thumb or a straight jacket formulate as an abstract preposition of law. It depends on the facts of the case, nature of the enquiry and the effect of the order/decision on the rights of the person and attendant circumstances.

22. At this juncture it would be appropriate to refer to the explanation tender by the petitioner in respect to alleged misconduct. The explanation reads thus:

"माझ्या उत्तरपत्रिकेत सुरुवातीचे इंग्रजी लेखन बनतेपअम (जोडलेली अक्षरे) स्वरुपात सुबक लिहीले आहे. परंतू शेवटी वेळ कमी पडू लागल्याने वेगवान लेखनासाठी मी चतपदज (वेगवेगळी अक्षरे) स्वरुपात शेवटचा भाग पुरवणी लिहीला आहे. तसेच सुरुवातीस वापरलेला पेन संपल्यामुळे निळया षाईचाच पण वेगळी छटा (षेड) असलेला पेन वापरला आहे. उपरोक्त कारणामुळे लेखन थोडे वेगळे दिसत असले तरी मी सत्य प्रतिज्ञेवर लिहुन देते की, दोन्ही हस्ताक्षर माझे स्वतःचेच आहे. फक्त वेळ, पेन, षाई भिन्न असल्याने व सुवातीस षांतपणे व शेवटी घाईत लिहिल्याने वेगळे दिसते आहे. आज रोज्ी मी आपणासमोर दोन्ही प्रकारच्या हस्ताक्षरात बायोलॉजी पुस्तकातील एकच परिच्छेद नमुन्यासाठी लिहुन दिला आहे."

23. In the light of admissions given by the petitioner as regards alleged difference in handwriting, pen and ink, as observed herein above and in view of the fact that the petitioner never made any request for grant of personal hearing which she could have made as per the provisions of procedure for inquiry, we do not find any violation of principles of natural justice as alleged by the petitioner. Hence the contention of the petitioner in that regard, is rejected and further we hold that the prescribed procedure for inquiry as stipulated in Maharashtra State Board's Procedure for Inquiry, was complied with in the present matter.

24. As far as the judgments cited by the learned Counsel for the petitioner are concerned, those are not applicable to present case and distinguishable on facts. In the case of Rakesh Balasaheb Landge (supra), printed material was found lying in the vicinity of the bench occupied by the petitioner in which the possibility of throwing the said printing material by any other person on the said spot, held cannot be ruled out. Hence, on facts, the said judgment is not applicable to the present case.

25. In the case of Bharat Ghanshyam chhabada (supra), the court held in favour of the petitioner student on the ground that the petitioner was not given equal, fair and full opportunity ignoring the guidelines in Manual Code Conduct of examination. In the present matter, we have already held that adequate opportunity was provided to the petitioner as per procedure of inquiry. Thus, the said case is also not applicable to the present case.

26. In the case of Shaikh Shafaque Anjum M. H.(supra), the Court has held that mere similarity in one answer of two examinee could not lead to conclusion that the petitioner had resorted to coping. In the present matter, there is no such fact, as it was in the said case. For these reasons, the said case is distinguishable on facts.

27. In the case of Prasadha Kismatkumar Trivedi (supra), the action was taken on the apprehension of examiner that the answer given by the candidate to one question was similar with a paragraph in textbooks. However, no objectionable material was found on person of a candidate at the time of examination, the Court has held that use of unfair means not proved. In the said matter, the Court has held in favour of the petitioner on the point of violation of principles of natural justice. In the present matter, this Court has already given finding that the principles of natural justice are not violated in the present case. Thus, the said case is also distinguishable on facts.

28. In W.B. Council of Higher Secondary Education (supra), the Court held in favour of the student on the ground that alleged malpractice was not detected in the hall in question but it was detected after the examination was over. In light of Hon'ble Apex Court's judgment in the case of Maharashtra State Board of Secondary and Higher Secondary Education (supra), we are not in agreement with the view taken in the said judgment

29. In the case of Rajeshkumar and Anr. (supra), the facts are totally different and judgment in the said case was given in a particular set of facts of that case. Hence, the said judgment is distinguishable and not applicable to the present case.

30. In the case of Sarat Kumar Panigrahi (supra), the Court has observed that undisputedly, facts establishing that seized material was of no relevance to the candidate's examination and that it was not used and therefore, Court held in favour of the student. The said judgment is also distinguishable on facts and therefore, according to us, the judgments cited by the petitioner are not of any assistance to the petitioner in the present matter.

31. Now the only question remains is that of proportionality of quantum of punishment inflicted upon the petitioner. In this regard the judgments relied upon by the respondents-Board are more relevant. The Hon'ble Apex Court in the case of Maharashtra State Board Vs. K.S. Gandhi (supra) has observed thus -

39. The question then is whether the rules relating to mode of punishment indicated in the Appendix 'A' to the resolution invalid. We have given our anxious thought to the contention and to the view of the High Court. In our view the punishments indicated in the last column is only the maximum from which it cannot be inferred that it left no discretion to the disciplinary authority. No axiomatic rule can be laid that the rule making authority intended that under no circumstances, the "Examination Committee could award lesser penalty. It depends on the nature and gravity of the misconduct to be dealt with by the disciplinary authority. In a given case, depending on the nature and gravity of the misconduct lesser punishment may be meted out. So by mere prescription of maximum penalty rules do not become invalid.

40. We have no hesitation to conclude that when the evidence justified the Education Standing Committee to record the finding that the examinee, parents

or guardians are parties to the fabrication, it is not open to the High Court under Article 226 to itself evaluate the evidence and to interfere with the finding and to quash the impugned notification. This Court under Article 136 has to correct the illegalities committed by the High Court when it exceeded its supervisory jurisdiction under Article 226. In view of the fair attitude adopted by the counsel for the Board, it is not necessary to go into the question of quantum of punishment.

32. Similarly, in case of *Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others* reported in (2003) 8 SCC 311 (supra) , the Supreme Court in para No. 21 has observed as under:

21. In *Madhyamic Shiksha Mandal, M.P. Vs. Abhilash Shiksha Prasara Samiti*, this Court observed: (SCC p. 237, para 2).

"In the face of this material, we do not see any justification in the High Court having interfered with the decision taken by the Board to treat the examination as cancelled. It is unfortunate that the student community resorts to such methods to succeed in examinations and then some of them come forward to contend that innocent students become victims of such misbehavior of their companions. That cannot be helped. In such a situation the Board is left with no alternative but to cancel the examination. It is extremely difficult for the Board to identify the innocent students from those indulging in malpractices. One may feel sorry for the innocent student but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far as this examination was concerned. It had no alternative but to cancel the results and we think, in the circumstances, they were justified in doing so. This should serve as a lesson to the students that such malpractices will not help them succeed in the examination and they may have to go through the drill once again. We also think that those in charge of the examinations should also take action against their supervisors/investigators etc. who either permit such activity or become silent spectators thereto. If they feel insecure because of the strong-arm tactics of those who indulge in malpractices, the remedy is to secure the services of the uniformed personnel, if need be, and ensure that students do not indulge in such malpractices."

33. Examination is an instrument for testing, assessing, evaluating knowledge and competence of individual student after exposing him or her to definite course of instruction. Malpractices has been a major concern and has become a major challenge to examination bodies. To stop this menace or to eradicate this problem and to maintain purity and fairness in examination, some deterrent punishment is needed.

34. Thus, we do not propose to adopt any liberal approach in the present case or interfere with the quantum of punishment imposed upon the petitioner, as the same is just and proper.

35. Hence, the present petition is dismissed with no order as to costs.