

(2007) 10 BOM CK 0116
In the Bombay High Court
Case No : Writ Petition No. 4151 of 2007

Uday Jondhale

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-10-2007

Acts Referred:

Citation : (2007) 6 ALLMR 797 : (2008) 1 MhLj 706

Hon'ble Judges : P.V. Kakade, J;P.R. Borkar, J

Bench : Division Bench

Advocate : N.N. Chitlange, holding for S.B. Talekar, for the Appellant; Dilip Bankar Patil, A.G.P. for R. Nos. 1 and 2 and V.P. Latange, for R. No. 4, for the Respondent

Judgement

P.V. Kakade, J.—Heard learned Advocate for the petitioner as well as Mr. Latange, learned Advocate for Respondent No. 4 University. The learned A.G.P. appears and waives service for R. Nos. 1 and 2.

2. Rule. Rule is made returnable forthwith by consent of the parties and taken up for hearing.

3. The petitioner has sought quashing of the order cancelling his performance of VI Semester B.Sc. (Computer Science) third year examination held in April/May, 2007 passed by the Respondent No. 4 University and further directions to Respondent No. 3 to grant admission to M.C.A. Course pursuant to the offer of admission dated 27.5.2007 and also to grant provisional admission to Master's Degree Programme of the Department of Computer Science. The petitioner has also sought direction to Respondent No. 4 University to declare the result of VI Semester as a sequel of quashing the order cancelling his performance, passed by Respondent No. 4 University and other consequential reliefs.

4. The petitioner took admission to B.Sc. (Computer Science) Course in July, 2004 and appeared in I and II Semester examinations in April/May, 2005. He appeared for III and IV Semester examination in October / November, 2006 and

on 5.5.2007, while writing 4th paper of VI Semester examination of Multimedia System subject, the Flying Vigilance Squad visited the examination center and recovered a chit from under the desk of the petitioner and the answer paper of the petitioner was forcibly collected and the petitioner was asked to leave the examination hall without ascertaining as to whether the chit was brought by him and whether the same was in his handwriting and was used for solving the question. The explanation of the petitioner was not accepted and therefore, the petitioner had to leave examination hall 15 minutes before without attempting the last question. However, the petitioner was allowed to appear for the last paper "Environmental Studies". The petitioner also appeared for MAH-MCA-CET 2007 examination and secured 102 marks out of 200. Thereafter, the petitioner applied for Master's Degree programme of the Department of Computer Science, University of Pune and was selected for provisional admission to MCA (Computer Science).

5. The petitioner received show cause notice dated 16.5.2007 calling upon him to remain present before the Committee constituted by the Board of Examination and in which course, he denied the allegations of unfair means. He offered oral explanation as well as in writing. According to the petitioner, he requested to supply xerox copy of the chit as well as the answer paper or at least, to show the copies of the chit recovered from under his desk as well as the answer paper written by him, which was denied by the Committee members. In the mean time, the Committee submitted report of enquiry to the Board of Examinations. The Board of Examinations decided to cancel his performance of VI Semester. The petitioner further approached the Controller of Examinations and requested to supply the relevant documents. However, the University cancelled his performance for VI Semester and hence, the present petition is filed raising a question as to whether the respondents were justified in cancelling the performance of the petitioner without verifying that the chit found from under his desk was in his handwriting or whether the same was used for solving the question paper? It was also submitted on behalf of the petitioner that the respondents were not justified in not supplying the copies of the chit and the question papers demanded by him during the course of enquiry.

6. The learned Counsel for Respondent No. 4 has supplied the original record for our perusal, which includes the paper in question i.e. the impugned paper of VI Semester and the chit which was said to be with the paper itself i.e. in custody of the petitioner and it was not found, as alleged, under the bench.

7. We were also taken through the relevant Rule under Ordinance regarding Unfair Means Resorted to by the students, which is contained in Ordinances for Central Assessment Programme. The Rule 10 contains the details of procedure of the Committee appointed under the said Rules for Unfair Means Enquiry which is called "Unfair Means Enquiry Committee".

The learned Advocate for the petitioner brought to our notice the show cause notice dated 16.5.2007 (Exh. F to the petition), issued to the petitioner by

Respondent No. 4, which notified the petitioner that the report of the unfair means of the petitioner was received from the Assessment Center and, therefore, the petitioner was called upon to show cause in that regard in respect of alleged malpractice, for which purpose, he was called upon to remain present before the Committee on 29.5.2007 within the precincts of the University. Now, on critical perusal of the show cause notice, it is observed that it is conspicuous by silence with regard to the allegations of malpractice against the petitioner.

It only shows that the report from the Examination / Assessment Center was received regarding malpractice and, therefore, the petitioner was called upon to respond to the said communication regarding malpractice committed by him. In our considered view, this show cause notice is contrary to the provisions of Rule 10(i) of the said Rules, which reads thus:

10.10.10. Procedure of the Committee. Procedure of the Committee. Procedure of the Committee. Procedure of the Unfair means Inquiry Committee shall be as given below:

(i) The Controller of Examinations of the University/Principal of the College or Head of the Recognised Institution, or the Officer authorised by them, as the case may be, shall inform the student concerned in writing the act of unfair means alleged to have been committed by him/her, and shall ask him/her to show cause as to why the charge/s levelled against him/her should not be held as proved and the punishment stipulated in the show cause notice be imposed.

8. In other words, what the Committee was expected to do while issuing show cause notice was to spell out in short the details of alleged malpractice so as to enable the petitioner to prepare his response after knowing as to what were the allegations levelled against him. No doubt, in the present case, the petitioner was given an opportunity to explain about the allegations levelled against him. However, the petitioner responded to the said allegations by making a statement that the chit was found lying under his bench and he had nothing to do with the said chit. The allegation and prima facie finding of the examination committee was to the effect that the chit was found in the custody of the petitioner and, therefore, he was found guilty and was punished accordingly, under the relevant Rule i.e. Rule 12 Sr. No. (1) i.e. Possession of copying material by student and the punishment was to the effect of annulment of the performance of the said examination in full. However, the show cause notice did not reflect the allegations made against the petitioner at all.

9. The learned Advocate for Respondent No. 4 vehemently urged that they had complied with all the relevant Rules which were in consonance with the principles of natural justice. In fact, Rule 10(v) stipulates that the Committee shall follow the spirit of the principle of natural justice. However, in this case, the Committee by issuing defective notice, has obviously erred in not following the principles of natural justice.

10. In our considered view, in the matters involving disciplinary action against

students accused of committing malpractices, the procedure otherwise known to trials in the Courts is not and need not be necessarily followed. What is essential is that the person accused of the commission of the malpractice must have a fair and reasonable opportunity of stating his defence and proving the same on the basis of whatever materials he may call in aid. It is equally well settled that the High Court does not while examining the validity of any such order of punishment sit in appeal over the orders passed by the disciplinary Authorities so as to reappraise the evidence in order to substitute its own finding for that of the Disciplinary Authority. However, we cannot overlook the fact that when the principles of natural justice are obviously infringed, then the Court has to step in to remove such anomaly caused in the course such enquiry.

11. The learned Advocate for the petitioner sought quashing of the impugned order. However, we are of the considered view that, as noted earlier, we are not sitting in appeal over the order passed by Respondent No. 4 but, we are equally of the view that limited interference is necessary wherein remand of the matter is called for, for the purpose of fair enquiry against the petitioner.

12. The learned Advocate for the petitioner also brought to our notice the judgment dated 30th August, 2007 of this Bench delivered in Writ Petition No. 4387 of 2007 (Swapna Tulsidas Gajare v. The Divisional Secretary, Maharashtra State Board of Secondary and Higher Secondary Education, Aurangabad). However, the factual matrix in that case was totally different and, therefore, we are of the view that it is not applicable to the present case. Be as it may, we are of the view that the ends of justice would be met if we remand the matter for fresh enquiry from the stage of issuance of show cause notice.

13. Therefore, Rule is made absolute to the extent that the impugned order passed by Respondent No. 4 is set aside. The matter is remanded to Respondent No. 4 for enquiry afresh from the stage of issuance of show cause notice contemplated under Rule 10(i) of the said Rules. Respondent No. 4 shall issue show cause notice to the petitioner within two weeks from the date of this order and thereafter, the petitioner shall appear before the Committee and the enquiry shall be proceeded to, according to law. In the course of the enquiry, Respondent No. 4 also to bring on record the report made by the Committee of Examiners, if any, available with Respondent No. 4.

With these directions, petition stands disposed of with no order as to costs. Authenticated copies may be given to the parties.