

(1991) 09 BOM CK 0059
In the Bombay High Court
Case No : W. P. No. 2247 of 1991

Umesh Vithalrao Balpande and another	APPELLANT
Vs	
Maharashtra State Board of Secondary and Higher Secondary Education, Nagpur	RESPONDENT

Date of Decision : 26-09-1991

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (1991) MhLj 1510

Hon'ble Judges : W. M. Sambre, J;V. A. Mohta, J

Bench : Division Bench

Advocate : M. Ghare, for the Appellant; S.G. Aney, for the Respondent

Final Decision : Dismissed

Judgement

V. A. Mohta, J.—Rule returnable forthwith.

Heard by consent.

Umesh Balpande and his real brother Pravin the first and second petitioners appeared for the Secondary School Certificate Examination conducted in March 1991 by the Maharashtra State Board of Secondary and Higher Secondary Education, Nagpur Division (the Divisional Board) the respondent. Since their result was withheld, they filed a Writ Petition No. 2029 of 1991 in this Court, inter alia raising a contention that they did not know the reason for withholding the result. Notice before admission was issued to the respondent returnable on 19th August 1991. In the meanwhile the petitioners received communication calling upon them to present themselves in the inquiry. Learned counsel for the petitioners fairly informed about receipt of the said communication and their willingness to appear before the Inquiry Officer. On behalf of the respondent a statement was made that inquiry would be completed by 22nd August 1991 and decision in the matter would be announced immediately, in any case not beyond 30th August 1991. On those statements by the parties, the petition was disposed

of on 19th August 1991 with clarification that the petitioners were free to challenge the adverse decision, if any.

2. The petitioners appeared before the Inquiry Officer. Their attention was drawn to (i) several scorings of incorrect answers, their replacement by correct answers in different ink and style of writing and (ii) certain insertions in the available spaces in the answer books of subjects History/Civics. The petitioners made a statement that nothing was written by them subsequent to handing over of the answer books to the invigilator in the examination hall. The Standing Committee came to the conclusion that the petitioners had indulged into mal conduct of interpolation of answer papers with a view to get higher marks with the help of an examiner and consequently it imposed the punishment of cancellation of the March 1991 examination and debarring the petitioners from appearing for the next examination.

3. Aggrieved thereby this petition has been filed raising in all three points : (i) there is no power in the Board to impose punishment of disqualifying a student from appearing in further examinations; (ii) no punishment can be imposed for the mal-conduct alleged to have been committed outside the examination hall; (iii) inquiry is vitiated for not issuing a show cause notice in the prescribed form.

4. We will take up last point first. The petitioners received a telegraphic communication dated 9th August 1991 calling upon them to appear before the Inquiry Officer on 19th August 1991 for confidential inquiry. In Writ Petition No. 2029 of 1991 on 19th August 1991 the following order was passed :

"Heard parties.

Shri A. M Ghare, learned counsel for the petitioner informs us that now he has received the show cause notice in pursuance of which he is appearing before the enquiry officer today.

Shri S. G. Aney, learned counsel for the respondent No. 1. informs us that the enquiry will be over by 22-8-1991, the standing committee will take a decision in the matter within a period of one week and the results of the enquiry will be announced immediately, in any case not beyond 30-8-1991.

Petition disposed of accordingly. Needless to mention that the petitioners will be free to challenge the adverse decision, if any."

The petitioners on that very day came to know the reason for not declaring their results and also the purpose for which they were asked to appear before the Inquiry Officer. They agreed to appear and in fact appeared. Their attention was drawn to the objectionable portions in the answer papers. They gave their explanation to the effect that whatever was written was written in the examination hall only. The said explanations were not accepted by the Standing Committee. No prejudice to the petitioners is demonstrated in following the above procedure. In this background the grievance pertains merely to a form and not substance. This point, therefore, is devoid of any merit,

5. First and second points can be dealt with simultaneously since they have some overlapping areas. The respondent is constituted under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 (the Act) which is an "Act to provide for the establishment of a State Board and Divisional Boards to regulate certain matters pertaining to secondary and higher secondary education in the State of Maharashtra". The scheme and object of the said Act has been recently examined by the Supreme Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, . Upon conspectus of (i) sections 18, 19, 23 of the Act. (ii) Regulations Nos.9(2)(xviii), 14(2)(x) of the Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 (the Regulations) framed u/s 36 of the Act and (iii) resolution passed and Rules framed in "Annexure A" in the meeting of the State Board dated 26th October 1985, the Supreme Court held that the Board had ample power to punish a candidate for adopting unfair means of tampering with the result of the examination and that one of punishments could be of debarring him from the further examinations. The said decision is clearly a "law" declared under Article 141 of the Constitution on the points even though they were decided against a different backdrop.

6. In this context we may also notice Regulations Nos.41, 44 and 55. Regulation 41(4) inter alia obliges the candidate to abide by instructions regarding discipline to be followed during the course of examination and provides that any breach thereof will render him liable for action under Regulation No. 44. Regulation No. 44 provides not only for cancellation of admission to examination on certain grounds like error, malpractice, fraud or improper conduct but also for debarring from appearing in further examinations. Regulation No. 55 relates to power of the Divisional Board to amend the result of the examination where it is found to have been affected by error, malpractice, fraud, improper conduct or other matter of whatsoever nature 26-9-1991

7. Keeping in view all the above provisions, the very object of the Act and purpose of holding examinations, it is impossible to accept the submission that disciplinary and penal jurisdiction of the Board is restricted only to the precincts of the examination hall, because examination does not begin or end there. The word "examination" is not defined either under the Act or the Regulations or the General Clauses Act, though the word "final examination" is defined u/s 2(g) of the Act as to mean examinations conducted at the end of Secondary or Higher Secondary stage of education by the Divisional Board on behalf of the State Board. There is, therefore, no scope to give a restrictive meaning to the said word. Plain dictionary meaning of the word "examination" is "testing of knowledge or ability (of pupils, candidates) by oral or written questions". (Concise Oxford Dictionary, 6th Edition). Examination is not merely going through a ritual. Its essence, as Supreme Court has put in the case of The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, , is that "the worth of every person is appraised without any assistance from an outside source". To correctly evaluate the academic merit of a candidate and also to

instill discipline during the whole process of examination, are not only the powers of the Board but also its duties. Its jurisdiction must, therefore, extend to each and every stage leading to that fair appraisal finally. The stage begins much prior to the candidate entering in the examination hall to write down the answer script say for example appointing examiners and setting question papers. The stage next to writing down the answer scripts in the examination hall is their impartial evaluation. The last stage continues not only upto the declaration of result, but even thereafter in exceptional cases of subsequent discovery of error or malpractices like prior knowledge of questions set for examination, fraudulent means to increase the marks and a host of other factors. All these activities take place outside the examination hall. It will thus be seen that writing an answer script in the hall is not exhaustive of the idea of examination.

8. The resolution of the State Board dated 16th October 1985 providing procedure for inquiry and imposing punishment, defines "misconduct" thus :

"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 the 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 examination and fair declaration of results".

The use of the expression "at, for or in respect to" before the expression "the final examination" in the above definition is not without significance. Misconduct relating to any stage of the examination is covered by the above definition. Thus the words "examination" as well as "misconduct" have to be given wider contextual meaning and not restrictive meaning.

9. It is contended on behalf of the petitioners that the Act and the Regulations separately deal with three stages, viz. (i) examination, (ii) evaluation and (iii) declaration of result and, therefore, one cannot be mixed with the other and hence evaluation and declaration of results cannot form part of the examination. The submission has merely to be stated to be rejected since as held above, evaluation and declaration of the result are integral parts of the process of examination.

10. It is true that power to inflict punishment to disqualify a student for further examination is not expressly given under the Act. But that aspect is not decisive of the matter. The Regulations and the Resolution of the Standing Committee clearly confer such power. We have already referred to the rules framed in Annexure "A". They provide for different punishments for different nature of misconducts. Debarring a candidate for further examination is one such permissible punishment included in the said Annexure.

11. Power to inflict punishment in the matter of discipline pertaining to examination has clear nexus to the object of the Act and its proper

implementation. Indeed power to take disciplinary action against a student for misconduct is inherent in the Head of an institution. Disciplinary action is not merely a power but is a responsibility. This responsibility is not confined only to the erring student. There is a greater responsibility of protecting moral of other students and to maintain purity of examination. One of the objects of punishment in disciplinary matters is to have a deterrent effect on other students with a view to attain above objects. Therefore, the submission about absence of or unreasonableness of such power has to be repelled.

12. It is pertinent to notice that malpractices with relation to examinations are ever increasing qualitatively as well as quantitatively. Such malpractices are no more an art but are a science. Provisions of the Act and other similar enactments were found to be inadequate to check the menace. As a result, Maharashtra Prevention of Malpractices at University, Board and other specified Examinations Act, 1982 had to be brought on the Statute Book which makes malpractices also a criminal offence.

13. To conclude, petition is dismissed. No order as to costs.