

(2016) 07 BOM CK 0008

BOMBAY HIGH COURT (AURANGABAD BENCH)

Case No: Writ Petition No. 6346 of 2016

Chishti Farhanuddin
Kaiseruddin Chishti

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision: July 1, 2016

Citation: (2016) 4 ALLMR 846 : (2016) 4 BCR 705 : (2016) 5 MhLJ 280

Hon'ble Judges: S.S. Shinde and Sangitrao S. Patil, JJ.

Bench: Division Bench

Advocate: Ms. Pradnya S. Talekar, h/f. Talekar and Associates, Advocate, for the Appellant;
Mr. V.H. Dighe, AGP, Mrs. Surekha Mahajan, Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

S.S. Shinde, J.—Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. This Petition is filed with the following prayer:

(A) To quash the decision of the Board debarring the petitioner up to July, 2016 and further cancellation of result of the petitioner of XII standard examination held in February, 2016, to the extent of petitioner (Exhibit" C"), by issuing writ of mandamus or any other writ, order or directions as the case may be.

4. The background facts leading for filing this Writ Petition as disclosed in the memo of the Petition are as under: The petitioner appeared for 12th standard examination conducted by respondent nos. 2 and 3, held at respondent no. 4 - College in February, 2016. The petitioner was appearing for last examination paper in Biology subject. The examination hall was searched by the Flying Squad of the Maharashtra Secondary and Higher Secondary Education Board. The Squad found a paper (hereinafter called as "chit") near the seat of the petitioner. It is alleged that the said

chit was found with the petitioner. Therefore, the Squad prepared necessary documents and submitted to the Board. The Enquiry Officer was appointed by the Board so as to enquire into the matter.

5. Respondent no. 3, the Chairman of the Board, issued a show cause notice to the petitioner, alleging that one printed page (i.e. the chit) was found with him and directed to submit the explanation before the Enquiry Officer. The petitioner, pursuant to the show cause notice, appeared before the Enquiry Officer and submitted the explanation in the printed format i.e. in the question answer form, supplied by the Enquiry Officer on 02.04.2016. However, the copy of the chit alleged to have been found with him was not supplied to him. The Divisional Board has a power to deal with cases of use of unfair means according to the procedure laid down by the State Board under Section 19 (1) of the Maharashtra Secondary and Higher Secondary Education Board Act, 1965 (for short "the Act"). Similarly, Regulation 14 (2) (x) confers the power on the Standing Committee to deal with the cases of use of unfair means by persons seeking admissions to or appearing at the final examination, according to the procedure laid down by the State Board. However, the Standing Committee has to exercise such power subject to the control of the Divisional Board.

6. According to the petitioner, the Standing Committee did not follow the procedure laid down by the State Board while holding an enquiry as to whether the petitioner had in fact used unfair means at the examination. The punishment of disqualifying a student from appearing in further examination being an extreme or rather harsh, the Standing Committee ought to have strictly adhered to the procedure laid down by the State Board. Mere issuance of show cause notice and calling upon the petitioner to submit his explanation was not enough. The show cause notice dated 04.03.2016 does not spell out the details of misconduct i.e. use of unfair means at the XII standard examination held in February, 2016. Although there is a specific mention that on the request of the petitioner, he should be given permission to examine the chit allegedly seized from him in the examination hall, the petitioner was not allowed to examine the said chit. The petitioner was writing the answer paper in Biology subject. As a matter of fact, the said chit was in respect of Mathematics subject.

7. It is further the case of the petitioner that during the course of hearing on 02.04.2016, he had requested the members of the Standing Committee to furnish the copy of the chit alleged to have been found with him, statement of the class supervisor / invigilator, report of enquiry submitted by the Enquiry Officer or at least permit him to examine those documents. However, the petitioner was not given that opportunity. As a result, the petitioner had no opportunity to rebut the allegations against him. In any case, the material which was adverse and used against him was not made known to him. The enquiry was conducted in total violation of the principles of natural justice, whereas the report of enquiry was not

supplied to him. The petitioner specifically contended before the Enquiry Officer that he appeared for examination in Biology subject, while the chit which was found was pertaining to Mathematics subject. The petitioner further contended that the printed paper was not found on his person but was lying near his bench and therefore, false action has been taken against him.

8. It is further the case of the petitioner that the Enquiry Officer submitted his report to the Board. Surprisingly enough the Board held that the petitioner had committed malpractices at the examination in Biology subject. The Board held that he should not appear for XII Examination till July, 2016. The result of the examination held in February, 2016 has been cancelled. Immediately, after he came to know about the list of debarred candidates, the petitioner approached respondent no.2 and requested to withdraw the decision debarring him up to July, 2016.

9. The petitioner approached the Board by filing an application under Right to Information Act and sought copies of the chit alleged to have been found with him, the statement of the class supervisor, explanation submitted by the petitioner to the show cause notice, report of the enquiry submitted by the Enquiry Officer and decision taken by the Board to the petitioner. Meanwhile, the Board published the Schedule for filing examination application of the XII Exam scheduled to be held in July, 2016.

10. Being aggrieved by the decision of the Board debarring the petitioner up to July, 2016 and cancellation of result of the petitioner of XII standard examination held in February, 2016, the petitioner has filed this Writ Petition, challenging the legality, validity and correctness of the impugned order.

11. The learned counsel appearing for the petitioner submits that respondent nos. 2 and 3 did not follow the principles of natural justice and did not afford reasonable opportunity to put forth the contention of the petitioner. It is submitted that the alleged chit which was recovered, in spite of repeated requests of the petitioner, the copy of the same was not supplied to the petitioner, even the other documents were not supplied. The learned counsel appearing for the petitioner further submits that on the alleged date of incident, the petitioner appeared for writing paper of Biology subject and alleged chit which was found was pertaining to the Mathematics subject. Therefore, he submits that in the first place the said chit was not recovered from the person of the petitioner and secondly the said chit had no bearing with the subject of Biology. He submits that in similar fact situation, the Bombay High Court Bench at Aurangabad in the case of *Ashish Haribhau Sarode v. State of Maharashtra and Ors.*, has quashed the order passed by the Standing Committee canceling the result of the petitioner therein and debarring him from appearing for XII Std. examination till October, 2001, in view of the fact that the papers found with him were not connected with the subject in which the petitioner was giving examination and the papers were not found in physical possession of the petitioner and that they were lying near his bench.

12. The learned counsel appearing for respondent nos. 2 and 3 has tendered across the Bar file containing original documents in respect of subject matter involved in the Petition including the chit alleged to have been found lying underneath the chair on which the petitioner was sitting. Therefore, she submits that the action taken by the respondents is in accordance with the provisions of the relevant Regulations.

13. We have given careful consideration to the submissions of the learned counsel appearing for the parties. With their able assistance, we have perused the pleadings in the Petition, annexures thereto, the documents from the File procured from the office of respondent nos. 2 and 3, produced for our perusal. Admittedly, the chit that was found or recovered was bearing the contents of the Mathematics subject. Upon careful perusal of the letter written by the Supervisor Mr. R.B.Bange to respondent no.2, it is abundantly clear that the said chit was not recovered from the person of the petitioner, but it was lying nearby the place where he was sitting in the examination hall and that it was containing the matter of Mathematics subject. There is also another letter addressed to one Mr.G.M.Borse, who was incharge of the Examination Centre, stating therein that the said chit was not relating to the Biology subject for which the petitioner was giving examination and it was in respect of Mathematics subject. The petitioner, in his explanation to the notice, issued to him, stated thus:

**ek>k isij Biology pk gksrk th uDdy iMysyh vk<+GGh rh x.khr (Maths)
fo"k;k;kph gksrh eh uDdy dsyh ukgh ck;ksyht Biology o Maths xf.kr pk
dkgh gh laca/k ukgh ek>h fpV~Bh uOgksrh0**

**ifj{ksp s fno"kh eh dcwy dsys ukgh ifj{ksp s fno"kh rls fuosnu dsys
vkg0**

This explanation was given by him on 02.04.2016. On 04.03.2016, when he was asked about the alleged chit, he stated (in verbatim) thus:

"In my desk there was a maths copy and my paper was of Biology. There is no consult of this copy with my subject. I told to sir but he didn't listen."

14. Therefore, upon perusal of the statements of the Supervisor and the Chief Examiner of the concerned Centre and also the explanation offered by the petitioner, in our opinion the same should have been accepted as plausible explanation by respondent nos.2 and 3. The Bombay High Court Bench at Aurangabad in the case of Ashish Haribhau Sarode (supra), while considering the similar fact situation, in para 9 held as under:

"Thus, it is seen that on question of fact it is not proved that the papers were found on the person of the petitioner. The papers found were not connected with the subject for which the petitioner was appearing on that day and the Enquiry Officer has exonerated the petitioner, the Standing Committee has punished him without giving any reasons for the same. In such circumstances, we hold that the order

passed by the Standing Committee has to be quashed and set aside".

15. Therefore, taking over all view of the matter in the peculiar facts and circumstances of this case, in our opinion, the Writ Petition deserves to be allowed in terms of prayer clause A. Accordingly, we allow the Writ Petition, quash and set aside the impugned decision cancelling the result of the petitioner and debarring him from appearing for the examination till July 2016 and direct Respondent nos. 2 and 3 to forthwith declare the result of the petitioner and allow him to fill up the examination form immediately so as to enable him to appear for the examination scheduled to be held in the month of July. Respondent nos. 2 and 3 shall ensure that such exercise is completed as expeditiously as possible however on or before 5th July, 2016.

16. Rule is made absolute on the above terms. Accordingly the Writ Petition stands disposed of. No costs.