

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) WP NO.2909/2015

**WRIT PETITION NO. 2909 OF 2015
WITH
CA/4091/2015 IN WP/2909/2015**

Omesh s/o Uttamrao Rathod,
Age 17 years, Occu: Student,
r/o. Jijai Bungalow, Shingte Nagar,
Dudth Sagar Road, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon,
Since minor through his father
Uttamrao s/o Nanuram Rathod,
Age 68 years, Occu. Retired A.C.P./S.D.P.O.
R/o as above.

...PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary
Higher and Technical Education,
Polytechnic College, Bandra
Mumbai.
2. Deputy Secretary,
Maharashtra State Board for
Technical Education Region
Aurangabad, Tq. & Dist.
Aurangabad.
3. The Chairman / Principal of
Enquiry Committee,
Polytechnic College, Jalgaon,
Tq. & Dist. Jalgaon.

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4. The Vigilance Squad,
through Shri S.P.Deshpande
Shahada Polytechnic College,
Shahada,Tq. Shahada,
Dist. Nandurbar / Dhule.

...RESPONDENTS

...
Advocate for Petitioner : Mr.Rathod Abhaya R.
AGP for Respondent State:Mr. G.R.Ingole
Mr. Jadhavar Santosh S., Adv., For R/2.
Respondent nos. 3 and 4 served.

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CORAM : S.S. SHINDE & P.R. BORA, JJ.
Dated: April 13, 2015

PER COURT :-

1. This petition is filed with following prayers:

"A. Kindly allow the Writ Petition by quashing and setting aside the order passed by respondents punishing the petitioner for malpractices during Winter 2014 Examination of 2nd year Diploma in Civil Engineering Course by cancelling his performance of Winter 2014 and debarring petitioner from Summer 2015 Examination at Exhibit-B and for that purpose kindly issue necessary orders.

B. By issue of appropriate writ order or direction kindly direct the respondents to declared the result of the petitioner of 2nd Year Civil Engineering Diploma Course Examination Session Winter 2014 and also direct the respondents to allow the petitioner to appear in the Session of Summer 2015 Examination and for that purpose issue necessary orders.

C. Pending hearing and final disposal of the writ petition kindly stay the effect operation and implementation of the punishment given to petitioner of cancellation of performance

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in examination of 2nd Year Civil Engineering Diploma Examination Session of Winter 2014 and further punishing him for debarring from Summer 2015 Examination and for that purpose issue necessary orders.

D) Pending hearing and final disposal of the writ petition kindly direct the respondent No.2 to accept the examination form of the petitioner for Summer 2015 Exam for 2nd year Civil Engineering Diploma Course.

E) Ad-interim relief in terms of prayer clause "C" and "D" may kindly be granted.

F) Any other just and suitable relief to which the present petitioners are entitled may kindly be granted in favour of the present petitioners. "

2. Counsel appearing for the petitioner submits that, even if the instructions, on which reliance is placed by the respondents are read as it is, in that case also, punishment of cancellation of performance in examination of 2nd Year Civil Engineering Diploma Examination Session of Winter 2014, and also debarring the petitioner from appearing in the Summer Examination of 2015, is very harsh.

3. Learned Counsel appearing for respondent no.2, relying upon examination regulations issued by the Maharashtra State Board of Technical Education, Mumbai, and in particular, instruction No.25 of Instructions to Examinees, submits that, Examinees shall not write anything on the question paper of the examination except for his/her seat number, and writing anything on question

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paper amounts to malpractice and is liable for punishment.

It is further submitted that, upon comparison of the handwritten portion on the question paper, and answer to question No.3-E, the portion handwritten on the question paper is reproduced in the answer sheet. It is submitted that Scrutiny Committee is formed, and in the present case, the case of the petitioner was placed before the Scrutiny Committee. The Committee, upon considering the material placed before it, has taken a decision to cancel the performance of Examination of Winter 2014 and debar the petitioner from appearing in the Summer Examination of 2015. Therefore, learned Counsel appearing for respondent no.2 submits that this Court may not invoke writ jurisdiction and interfere in the impugned decision taken by the Committee.

4. We have given careful consideration to the submission of the learned Counsel for the petitioner, learned Counsel appearing for respondent no.2, perused annexures to the petition, and the reasons assigned for cancellation of performance of the petitioner, and decision to debar him from appearing in Summer Examination, 2015.

5. At the outset, it would be apt to reproduce here-in-below instruction No.25 published by Maharashtra State Board of Technical Education, Mumbai, which reads thus:

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"25. Examinees shall not write anything on the question paper of the examination except for his/her seat number. Take note that such writings amount to mal practice and is liable for punishment. "

6. Admittedly, in the present case, upon perusal of the question paper, which is part of the record, there is handwritten portion on page no.24 and page No.23. This position is not in dispute. Therefore, the case of the petitioner would squarely fall under instruction No.25 inasmuch as even writing on the question paper would amount to malpractice.

7. So far as cancellation of performance for the Winter Session Examination 2014 and debarring the petitioner from appearing for Summer Examination, 2015, is the decision taken by the Committee. We have no reason to hold that the Committee had any grudge against particular candidate and, therefore, the decision will have to be construed as being arrived at after objective assessment of the material and in the light of the relevant regulations. Therefore, in extraordinary writ jurisdiction, we are not inclined to interfere in the impugned decision, however, we make it clear that, if the respondents, on their own, wish to take sympathetic view, dismissal of this petition would not be an impediment for considering the request of the petitioner.

8. At this stage, Counsel appearing for the petitioner submits that petitioner will make a representation to respondent

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no.2, and Counsel appearing for respondent no.2, on instructions, makes a statement that, such representation would be considered on or before 17th April, 2015.

9. With the above observations, the Petition (No.2909/2015) stands rejected. Civil Application disposed of.

(P.R. BORA, J.)

(S.S. SHINDE, J.)

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