

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.5026 OF 2009

Siddharth s/o Nihalik Sirsath,
Age 27 years, Occu. Student,
R/o Gurukul Housing Society,
Shahada, District Nandurbar

... PETITIONER

VERSUS

1. Maharashtra State Examination
Council, Pune, through its
Commissioner.

2. Shri Rahul Choudhary,
Deputy Education Officer (Secondary),
Zilla Parishad, Nandurbar

... RESPONDENTS

.....
Shri S.R. Barlinge, Advocate for petitioner
Shri A.R. Nikam, Advocate for respondent No.1
.....

CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.

DATED: 6th April, 2015.

ORAL ORDER :

1. Mr. Barlinge, the learned counsel for the petitioner strenuously contends that the principles of natural justice have

not been followed as is laid down by the Apex Court from time to time. The performance of the petitioner is cancelled and he is also refrained from appearing for two further examinations. Before passing the said order a long-drawn enquiry is contemplated under the Statute. The learned counsel relies on the judgment passed by the Division Bench of this Court in the case of Tejsingh Arvind Deshmukh Vs. Maharashtra State Secondary & Higher Secondary Education Board, Nagpur, reported in 1992(1) Mh.L.J. 532. Learned counsel further submits that though the period of punishment is over, still the manner in which the respondent No.2 has humiliated the petitioner, can be said to be subject matter of enquiry. The respondent No.2 has not responded to the notice issued by this Court. The averments made in the petition will have to be taken as not controverted by the respondents and ought to be relied. In such circumstances, the respondent No.2 is required to be fastened with the liability. While imposing the punishment, the alleged statements of the petitioner and his neighbour who was sitting next to him in examination hall is relied. The signatures on said forms/ statements have been taken on blank forms and thereafter filled in to suit their purpose. According to the learned counsel, even the neighbour of the petitioner sitting in the

examination hall has given a statement that his signature was taken on blank form. In the questionnaire given to the petitioner when the petitioner was called for enquiry, the petitioner has specifically denied his guilt. As such, the enquiry as contemplated ought to have been conducted. No copy of the enquiry report was given to the petitioner.

2. Mr. Nikam, the learned counsel for respondent No.1 submits that, the principles of natural justice were followed. Show-cause-notice was given to the petitioner asking him to remain present in the enquiry. His statement was recorded and thereafter action was taken. The invigilator has also given the statement that the material was found with the petitioner.

3. We have considered the submissions canvassed by the learned counsel for the respective parties. The respondent No.2 though served, has not appeared.

4. In normal parlance, the contention of Mr. Barlinge, the learned counsel could have been accepted that averments made in the writ petition have not been controverted by the respondent No.2, however, the respondent No.2 was made party

in his personal capacity and no relief is claimed against respondent No.2. As such, the contentions made against respondent No.2 are not being considered. The period of punishment imposed is already over about five years back. The statement of invigilator is recorded. The statement of one of the person who was sitting next to the petitioner in the examination hall is also recorded.

5. It is stated that the petitioner has completed his D.Ed. subsequently. It would be too late in the day for us to consider the petition as it stands and as is filed.

6. In light of the above, the Writ Petition is disposed of. No costs.

(A.I.S. CHEEMA, J.)

(S.V. GANGAPURWALA, J.)