

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.01.2015

+ **W.P.(C) 6863/2014**

MASTER TARNPREET SINGH VIRK

..... Petitioner

versus

UNION OF INDIA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Amrit Kaur Oberai, Mr Shubham Jain and
Ms Jesica Gill.

For the Respondent : Mr Rajesh Ggna, CGSC for UOI
Mr Amit Bansal and Ms Seema Dolo for R2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner impugns a memo dated 22.05.2014 (hereafter the 'impugned order') issued by the respondent no.2 imposing a penalty on the petitioner for adopting unfair means; the petitioner's result for the XIIth standard board examination taken by him in March, 2014 has been cancelled.

2. The impugned order was passed as the "Unfair Means Committee" had found that the petitioner had submitted examination forms from two schools simultaneously and it is alleged that the same would have resulted in "undue benefit" to the petitioner.

3. The learned counsel for the petitioner submits that no undue benefit could have been derived by the petitioner by submitting the two

examination forms. She further submits that in any event, one of the schools had withdrawn the candidature of the petitioner as a student of its school much prior to the investigations being commenced. Further, the admit card of the petitioner had been printed only from his current school and therefore no *mala fides* could be attributed to the petitioner.

4. The limited controversy to be addressed is whether, in the given circumstances, imposition of a punitive measure on the petitioner for signing two examination forms was warranted?

5. Brief facts necessary for addressing the controversy are as under:-

5.1 The petitioner was a student of Baba Ram Das Vidyapeeth School, Kulvehri, Karnal (hereafter the 'Karnal School') where his father was the Principal. Sometime in June 2013, the petitioner's father was transferred to Delhi as the principal of Guru Harkrishan Public School, Poorvi Marg, Vasant Vihar (hereafter the 'Delhi School'). In the circumstances, the petitioner applied for a transfer certificate from the Karnal School. Admittedly, the said certificate was issued to the petitioner on 25.07.2013 and, subsequently, the petitioner's transfer to Delhi was also approved by the Central Board of Secondary Education (hereafter 'CBSE') on 27.08.2013. Thereafter the petitioner joined the Delhi School.

5.2 Despite the fact that the petitioner had left the Karnal School and joined the Delhi School, the petitioner signed an examination form as a student of the Karnal School on 30.09.2013. Prior to this the petitioner had already signed an examination form on 27.09.2013 for appearing in the XIIth Standard Board Examination as a student of the Delhi School.

5.3 Apparently, a complaint was filed by one of the teachers of the Delhi School on 25.11.2013, alleging that the petitioner's attendance in the Delhi School was manipulated by his father and he is shown as present in the school whereas, in fact, he was absent. This complaint was further followed by another reminder dated 11.12.2013 whereby the complainant pointed out that the petitioner's name was appearing in the list of candidates of both the Delhi School as well as the Karnal School.

5.4 Pursuant to the complaint a committee was constituted by the respondent no.2 for a surprise inspection of the two schools, which was conducted on 05.02.2014. It was contended on behalf of the Karnal School before the said committee that the name of the petitioner had been forwarded on the verbal request of the petitioner's father as he had claimed that he had not received the confirmation from the CBSE regarding the transfer of his ward "i.e. the petitioner". The Karnal School had further asserted that, thereafter on 11.12.2013, the Karnal School had withdrawn the name of the petitioner from its list of candidates. The inspection conducted on the Delhi School found that there was a blank against the petitioner's name in the attendance register in respect of those days where the petitioner was absent, that is, neither 'A' nor 'P' was marked against the name of the petitioner as was done in respect of other students.

5.5 Admittedly, the petitioner's attendance in the Delhi School was less than the minimum required. Accordingly, a request for condoning the same was made to the CBSE and the same was condoned by the CBSE on 13.02.2014. Concededly, the petitioner's admit card for appearing in the

XIIth Std. Board Examination was issued pursuant to his shortage in attendance being condoned.

5.6 After the petitioner had taken the examinations, the petitioner was issued a show cause notice to appear before the Unfair Means Committee. The Unfair Means Committee held a meeting on 19.05.2014 and recommended a penalty under Category 2 – i.e. punitive measure to cancel the petitioner's result for the 2014 examination.

6. The Report of the Unfair Means Committee indicates that the only reason that weighed with the Committee was that the candidate had signed the examination form from two schools.

7. The learned counsel for the petitioner has pointed out that the petitioner's explanation for signing two forms was that a teacher from the Karnal School had visited his residence in Karnal and taken his signatures. The learned counsel for the petitioner submits that no undue benefit could have been obtained by the petitioner. She further submitted that the petitioner was admittedly a student of the Karnal School, his photograph affixed on the examination form was genuine and there was no false statement made by the petitioner in the said form. The petitioner had during the academic year joined the Delhi School and thus had also correctly filled the form with the Delhi School. She submits that father of the petitioner had not been questioned as to why he had arranged for a form to be submitted from the Karnal School. She emphasises that in any event the petitioner's candidature had been withdrawn by the Karnal School and, therefore, no *mala fides* could be attributed to the petitioner. She further contended that the petitioner was a bright student and had secured 9.4 points in his Xth

Standard. She also submitted that the petitioner had appeared in competitive examinations for joining an engineering course in SRM University, Chennai and Guru Govind Singh Indraprastha University and his name had appeared in the list of successful candidates. However, the petitioner could not join any of the said institutions as his result had been withheld and thus the petitioner has already suffered a harsh punishment for no fault on his part.

8. The learned counsel appearing for the respondent submits that the signing of two forms is not innocuous as sought to be made out by the petitioner and it was obviously for an ulterior purpose for obtaining an undue advantage. He submits that a candidate impersonating the petitioner could have sat for the examination. He further submits that it is possible that the petitioner intended to take benefit of being domiciled in Haryana and the purpose could have also been to keep his options open.

9. I have heard the learned counsel for the parties.

10. The petitioner is alleged to have violated Rule 36.1 (i) of the CBSE Examination Bye-laws which reads as under:-

“(i) If a candidate is found to have made a wrong statement in his/her application form for admission to the examination or has attempted to secure or has secured admission to any of the examinations of the Board or has secured admission to the examination of the Board by making a false statement or by production of a false document or otherwise, he/she shall be deemed to have used unfair means and his/her results shall not be declared.

In case where such a candidate has not yet appeared at the examination, his/her form of application shall be rejected and fee paid forfeited. If he/she has completed his/her examination, his/her form of application shall be rejected, fee paid forfeited and his/her examination shall be cancelled.”

11. A plain reading of the aforesaid bye-law indicates that a person who secures admission in any examination or attempts to do so on the basis of a false statement would be deemed to have used unfair means. In the present case there is no allegation that the petitioner had produced any false document, the only allegation is that the statement as to the name of the school in the examination form filed through the Karnal School was false. Concededly, bye-law 36.1 (i) provides for a punitive measure and therefore must be strictly construed. The intent and purpose of providing the bye-law is to ensure that no person secures admission by making a false statement. In this context, the materiality of the statement is also relevant. It is not disputed that the petitioner was a student of the Karnal School for part of the academic year. In that view, the statement indicating the name of his school as that of the Karnal School cannot be termed as patently false. More importantly, there is no benefit that was drawn by the petitioner as all his particulars in the examination form were, admittedly, correct. The photographs affixed on the examination forms were also of the petitioner and thus the submission that another person could have impersonated the petitioner is not sustainable. The principal reason why the petitioner's father had asked the petitioner to sign the examination form to Karnal School is not definitely known as the petitioner's father was not questioned

at any stage; perhaps he could have explained the reason why two forms were initially signed.

12. In any view of the matter, the Karnal School had withdrawn the name of the petitioner from its list of candidature on 11.12.2013 and therefore the petitioner had not secured his admission to the examination on the basis of the said examination form. While, it is correct that the petitioner had signed two examination forms, however, no misuse or *mala fides* can be attributed as the allegation that any undue benefit could have been obtained by the petitioner is wholly in the realm of speculation. The Unfair Means Committee has not even considered whether any possible benefit could have been derived by the petitioner. There is no dispute that the petitioner was entitled to be admitted to the examination in question on the basis of the form filed through the Delhi School and no false statement is alleged to be made in that form. The petitioner had taken his exam as a student of the Delhi School. The objective of bye-law 36.1 (i) is to prevent candidates from securing admission on the basis of a false statement and not to inflict punishment by nullifying the results of students who have taken the examination by disclosing the correct particulars.

13. The Unfair Means Committee's reports mentioned that the attendance records of the petitioner were intentionally kept blank for a possible manipulation in future. However, the same does not form the basis of the decision taken by the Unfair Means Committee. The learned counsel for the respondent has also fairly conceded that the only issue weighing against the petitioner was that he had signed the two examination forms from two different schools.

14. In view of the same, it is not necessary to examine the allegation whether there was any attempt to manipulate the petitioner's attendance in the Delhi School. Further the petitioner's shortage of attendance had been condoned and there has been no attempt on the part of the respondent to withdraw the said concession. It is noted that the surprise inspections were conducted prior to the petitioner taking the examination in question, however, no steps were taken by the respondent no.2 to withhold the petitioner from appearing in the said examination.

15. Rule 36.1 (i) of the CBSE Examination Bye-laws contains a legal fiction; it is deemed that any student securing or attempting to secure admission to any examination conducted by the board has employed unfair means. It is well established that legal fiction must be limited to the purpose for which it is created. It is apparent that the purpose of providing the legal fiction is to consider any attempt to secure undue benefit as unfair. However, in the present case, there was no propensity for the petitioner to secure any undue benefit by filing two forms and therefore, to consider the act of the petitioner in signing two forms – one of which was subsequently withdrawn – as unfair means that warrants disciplinary action, is not warranted.

16. It is also relevant to consider that examination forms are submitted through the school and not directly. It is not disputed that the form in question was submitted by the Karnal School. In this view, the default lies with the Karnal School which had collected the form from the petitioner and submitted to CBSE and the petitioner cannot be made to suffer for the same.

17. There is yet another aspect that needs to be mentioned. It is now trite law that any punitive measure must be proportionate to the offence for which the person is accused. The principle of proportionality is a well accepted facet of Article 14 of the Constitution of India. The quantum of punishment should not be so disproportionate to the offense as to shock the conscience. The Supreme Court in **Coimbatore District Central Coop. bank v Employees Assn: (2007) 4 SCC 669** held as under:-

“17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the “doctrine of proportionality”.

18. “Proportionality” is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.

19. de Smith states that “proportionality” involves “balancing test” and “necessity test”. Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter

(necessity test) requires infringement of human rights to the least restrictive alternative. [Judicial Review of Administrative Action (1995), pp. 601-05, para 13.085; see also Wade & Forsyth: Administrative Law (2005), p. 366.]”

18. In my view the punishment already suffered by the petitioner is highly disproportionate - the petitioner has lost the opportunity to join the engineering course in a well accredited institution and would have to take his chances in the next academic year.

19. In the given circumstances, where no *mala fides* are alleged or proved and even the sole allegation that a false statement made in the examination form may be explainable, the punishment imposed on the petitioner cannot be sustained. Accordingly, the impugned order is set aside and the respondents are directed to declare the results of the petitioner within one week. The petition is, accordingly, disposed of.

VIBHU BAKHRU, J

JANUARY 05, 2015
pkv/RK