

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3222 OF 2016

Kewalchand Narendrakumar Lilhare and others

-vs-

Maharashtra State Board of Secondary and Higher Secondary Education and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A.M.Sudame, counsel for the petitioners.
Mr. Anand Parchure, counsel for the respondents.

CORAM : SMT. VASANTI A. NAIK &
MRS. SWAPNA JOSHI, JJ.

DATE : 23.06.2016.

By this writ petition, the petitioners challenge the action on the part of the respondent-Maharashtra State Board of Secondary and Higher Secondary Education giving zero marks to the petitioners in the Chemistry paper in the Higher Secondary School Certificate Examination of Summer, 2016.

The petitioners were the students of Siddharth High School and Junior College, Dawaki, District Gondia and they had appeared at the Higher Secondary School Certificate Examination conducted by the respondent-Board in Summer, 2016. In all 125 students appeared in the Higher Secondary School Certificate Examination in Science Faculty from Siddharth High School and Junior College, Dawaki. The examination for the subject of Chemistry was held on 29/02/2016. The petitioners received a notice, dated 01/04/2016 alleging therein that the petitioners had resorted to unfair means, during the Higher Secondary School Certificate Examination and they should remain present in the office of the respondent No.2, before Shri Y.B.Borkar, the Enquiry Officer on 13/04/2016. Almost all the petitioners appeared before Shri Y.B.Borkar along with other candidates that had appeared for the examination from the said Centre.

On conducting an enquiry, it was held by the respondent-Board that there was mass copying at Centre Nos.0762 and 0743, as far as the Chemistry paper was concerned. The petitioners and all others that were involved in mass copying, as per the respondent-Board were given zero marks in the subject of Chemistry. The respondent-Board also cancelled the permission of Centre Nos.0762 and 0743 to conduct the examinations and the students that were allotted to the said Centre were directed to be allocated to Chhatrapati Vidyalaya, Pandhari which is seven kilometers from Dawaki where the students had indulged in mass copying. The respondent-Board decided to take action against the Centre In-charge as the Invigilator, in accordance with law. The petitioners have challenged the action on the part of the respondent-Board in giving zero marks to the petitioners.

Shri A.M.Sudame, the learned counsel for the petitioners, submitted that the action on the part of the respondent-Board in giving zero marks to the petitioners in the Chemistry subject is bad-in-law. It is stated that under the Act and the Rules, such a punishment is not contemplated. It is stated that neither has the respondent-Board cancelled the concerned examination of the petitioners, nor has the respondent-Board debarred the petitioners from appearing at the examination that would be conducted in future. It is stated that a proper procedure of enquiry was not followed. It is stated that the show cause notice is defective and it refers to the unfair means that were allegedly resorted to by the petitioners after the examination was conducted. It is stated that the Flying Squad of the respondent-Board had visited the Centre on the date of examination and had found everything to be in order.

Shri Anand Parchure, the learned counsel for the respondents, supported the action on the part of the respondent-Board. Some of the concerned officers of the respondent-Board were present in the Court and they had produced the answer-sheets of the petitioners and several others that had indulged in mass copying in the subject of Chemistry. By referring to the answer-sheets and by taking

the Court through the same, it is submitted that it was found after enquiry that almost every student had answered the questions in the same sequence and identically. It is stated that each and every question is answered in an identical manner. It is stated that the style of answers, the size of answers, the language and even the mistakes were the same. It is stated that it was found on the conclusion of the enquiry that the Chemistry teacher had written the answers on the blackboard and the students had copied the same in their answer-sheets. It is stated that if this was not so, each and every student could not have answered the questions in the same sequence and in the same manner. It is stated that a proper opportunity was granted to the petitioners and the other students that had appeared for the examination from the said Centre. It is stated that almost every petitioner attended the enquiry and when questions were posed to the petitioners in the subject of Chemistry, they were not able to answer them. It is stated that instead of imposing a harsh punishment on the petitioners, like cancelling their entire performance or debarring them for a limited period or directing a criminal prosecution, the respondent-Board decided to take a very lenient view in the matter by giving zero marks to the petitioners and the other students that were involved in mass copying from the said Centre, in the subject of Chemistry. It is stated that the petitioners would be entitled to appear at the supplementary examination that would be conducted within few days i.e. on 09/07/2016 and they may not lose a year. The learned counsel sought for the dismissal of the writ petition.

On hearing the learned counsel for the parties and on a perusal of the original record and proceedings that is produced in the Court today, we find that the relief sought by the petitioners cannot be granted. On a perusal of the answer-sheets of the petitioners and certain other students, it is clear that the respondent-Board was justified in holding that the students from the said examination Centre were involved in mass copying. May be, the answers may not have been written on the blackboard as stated on behalf of the respondent-

Board, but they may have been orally dictated in the class room where the examination was conducted or answer-sheets could have been provided on the desks. Every student has answered Question No.4 in the first place. This question has about 7 small objective questions. The papers we have perused clearly show that every student has answered the third objective question wrongly and the other six objective questions correctly. The matter did not rest here. All the other questions are also answered in the same sequence. The chronology of the questions solved, the style of answers, the size of answers, the language of the answers and even the mistakes are the same. This cannot happen unless the answers are provided to the students in that sequence. Initially when we had issued notice to the respondents, we had *prima facie* found some merit in the submissions made on behalf of the petitioners, but after we perused the answer-sheets and the other material that is produced before us in the Court yesterday and today, it is clear that the students from the said Centres had indulged in mass copying. We are not in a position to appreciate the submission made on behalf of the petitioners that the punishment of giving zero marks should not have been imposed on the petitioners, as the same is not provided under the Act and the Rules. If the petitioners are involved in mass copying, normally the punishment of cancelling the performance of the entire examination of that year or debarring them from appearing in some subsequent examinations is passed, but in this case, as we find from the order/decision of the respondent-Board that the Board has taken a lenient view and imposed a very minor punishment by giving zero marks in the subject of Chemistry, as compared to the misconduct committed by them. The petitioners are entitled to appear at the supplementary examination that would be conducted on 09/07/2016, so that one year of the educational career of the petitioners would not be wasted.

We find that the enquiry is conducted by the respondent-Board in the complaint in respect of mass copying at the Centres by the examiner, in a just and reasonable manner and no fault could be found

in the said enquiry, in the circumstances of the case. We are also not inclined to accept the submission made on behalf of the petitioners that the petitioners did not have a proper opportunity, as instead of striking off the clause pertaining to the malpractices committed after the examination, in the show cause notice the clause in respect of malpractices committed at the time of examination was struck off. It is not the case of the petitioners that the petitioners were not granted a reasonable opportunity when the enquiry was in progress and the respondent-Board did not grant any time to the petitioners, though they had sought for the same. Merely because some of the petitioners had secured good marks in some other papers, it cannot be said that they had not resorted to unfair means in the examination in the Chemistry subject, when we find from the material on record that it was proved beyond doubt that the petitioners had resorted to unfair means. We find, as stated on behalf of the respondent-Board, that the Board has inflicted a very minor punishment on the petitioners, as compared to the proof of the malpractices committed by them.

Since the relief sought by the petitioners cannot be granted, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE