

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4998 OF 2016

Miss. Sharvary Nandram Gore,
Age – 18 years, Indian inhabitant,
R/o. 132/846, Civil HUDCO,
Opp. Bachat Sarita, Savedi,
Ahmed Nagar - 414003.

... **Petitioner**

Versus

1. State of Maharashtra,
Through its Principal Secretary,
School Education & Sports Department,
Mantralaya, Mumbai.
2. The Divisional Secretary,
Maharashtra State Board of Secondary
& Higher Education, Pune Divisional Board,
Pune – 411 005.
3. The Deputy Director Education,
Pune Division, Pune – 411 001.
4. Education Officer (Secondary),
Zilla Parishad, Ahmed Nagar – 414 001

... **Respondents**

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Mr. V.D.Sapkal, Adv. holding for Mr.D.R.Adhav, Adv. for Petitioner
Mr. A.V.Deshmukh, AGP for State
Miss. S.P.Mahajan, Advocate for Respondent No.2

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CORAM : ANOOP V. MOHTA AND
SUNIL K. KOTWAL, JJ.

RESERVED ON : 6th July, 2017
PRONOUNCED ON : 19th July, 2017

JUDGMENT : (Per Sunil K. Kotwal, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by consent of learned counsel for the parties.

2. By filing this Writ Petition, the petitioner has sought relief to quash and set aside the impugned order dated 26.11.2015 passed by Respondent No.2 cancelling the performance of the petitioner at HSC examination held in the month of February-March, 2015 and debarring the petitioner from appearing examination upto October-2017. The petitioner has also claimed relief to direct the Respondent No.2 to issue fresh HSC Certificate and Marksheet of HSC examination to the petitioner held in the month of February-March, 2015. Though petitioner has initially claimed other various reliefs at the stage of final hearing, petitioner not pressed other reliefs and restricted her prayer only to prayer clause “a” and “e” as specified above. Therefore, other irrelevant pleading of the petitioner is not considered while passing this judgment.

3. Petitioner is daughter of Shri. Nandram Ganpat Gore and Smt. Mrunalini Nandram Gore, who are the Secretary and President of Jai Parvati Mata Shaikshanik, Samajik & Sanskrutik Mandal, Ahmednagar, a registered trust. The trust also runs Shahid Vitthal

Bhalsingh Junior College, Ahmednagar, from where the petitioner appeared for HSC examination in the month of February-March, 2015 and secured 89.38 % marks in Science Stream. According to petitioner, dispute is going on in between trustees of the above said trust and staff members of the above said Junior College, Ahmednagar. On account of that dispute, only to victimize the petitioner, false complaint was submitted by Smt. Indira Dnyaneshwar Rokade against the petitioner. In the result, Respondent / Board held inquiry and passed the impugned order dated 26.11.2015 on the ground that, during HSC examination held in the month of February-March, 2015 the petitioner used unfair means.

4. Respondent filed two affidavits in reply to oppose this petition on the ground that, Maharashtra State Board of Secondary and Higher Secondary Education is statutory body constituted under the provisions of Maharashtra Secondary and Higher Secondary Education Boards Act, 1965. Respondent No.2 is one of the Divisional Board amongst various Divisional Boards constituted in the State of Maharashtra. The Board has exercised its powers conferred by the Act and led down the 'procedure for inquiry' into the cases of misconduct and use of unfair means at the examination and also led down a schedule of punishments for *Mal* practices. The said procedure for inquiry and schedule of punishment has withstood

scrutiny of the Hon'ble Supreme Court in the case “***Maharashtra State Board of Secondary & Higher Secondary Education Vs. K.S.Gandhi, [1991(2) SCC 716]***”. In the year 1985, the State Board evolved the procedural guidelines for inquiry in case of use of unfair means, as per the direction issued by this Court. The schedule of punishment has been amended from time to time and part B of the Schedule of punishment deals with candidates appearing for 10th and 12th standard examination indulging in the act of Mal practices in the examination. According to respondents, the impugned order was passed after due compliance with principles of natural justice and after holding proper inquiry, according to the Procedure for Inquiry led down by the Board, after having given inspection of relevant documents and an opportunity of being heard to the petitioner. Unless there is violation of principles of natural justice or contravention of statutory provisions the Court should not interfere. Next contention of respondent is that, Smt. Indira Dnyaneshwar Rokade, mother of Ankita Dnyaneshwar Rokade student of 12th standard science made compliant dated 07.09.2015 against the petitioner that, she adopted *Mal* practices while appearing for the HSC examination from Jai Parvati Mata, Junior College, Ahmednagar. After receipt of that complaint, the Respondent No.2 held inquiry. After finding prima facie case, he decided to hold regular inquiry in the matter and

accordingly appointed Shri. K.D.Bhujbal, Block Education Officer as Inquiry Officer. As per procedure, notices were issued to the petitioner. During inquiry petitioner did not produce any witness as well as any documentary evidence and therefore, question of cross-examination did not arise. The Inquiry Officer after considering the evidence collected, reported that, petitioner had used unfair means during HSC examination, by keeping copying material with her and by writing the papers with the help of teachers by using the copying material. The inquiry report was placed before Standing Committee for its approval as per rules and on 26.11.2015 Standing Committee resolved to confirm the punishment granted by Inquiry Officer. In the result, on 26.10.2015 Respondent No.2 issued the notification for debarring the petitioner and for cancellation of her performance in HSC examination. According to respondents, the required procedure of inquiry was followed and the principles of natural justice were followed by the respondents and therefore, this petition is devoid of merits.

5. Learned Advocate for the petitioner assailed the domestic inquiry held at the instance of Respondent No.2, only on the ground that, the rule of natural justice is not at all followed by the respondent and the Inquiry Officer. On the other hand, learned Advocate for respondents supported an order passed by Respondent No.2 and

contended that, every opportunity of hearing was awarded to the petitioner during the domestic inquiry.

6. Respondents have filed 'procedure for inquiry' and schedule of punishment. Same rules are also relied by learned Advocate for the petitioner while assailing the inquiry conducted by Respondent No.2. Admittedly the rules regarding the procedure for inquiry are framed in accordance with law and these rules are also approved by Hon'ble Supreme Court as pointed out by respondent in reply affidavit. Therefore, the binding nature and legality of procedure for inquiry is not a disputed question in between the parties.

7. Learned Advocate for the respondent has placed reliance on “***Board of High School and Intermediate Examination U.P. Allahabad and Another Vs. Bagleshwar Prasad, [AIR 1966 (Supreme Court), Page 875]***”. The ratio of this authority is that unless there is justification to do so, Court should be slow to interfere with the decisions of Domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of impugned orders passed by Universities, under Article 226, the High Court is not sitting in Appeal over the decision in question. Its jurisdiction is limited and though it is true that, if the impugned order is not supported by any reason at all the High Court would be justified to quash that order.

8. There cannot be two opinions regarding the legal principles set out by Hon'ble Apex Court. Taking into consideration the limited scope of the inquiry, now proceed to analyse the material placed by the parties to ascertain whether basic principles of natural justice are followed, by Inquiry Officer as well as by respondents, while passing adverse orders against the petitioner.

9. As observed above, the inquiry held by Block Education Officer was in accordance with procedure for inquiry, which is binding to both the parties. Learned Advocate for the petitioner objected the validity of appointment of Inquiry Officer on the ground that, it is in breach of Rule 4(a) of Procedure for Inquiry. Rule 4(a) & 4(b) reads as under :

***4(a)** – Upon receipt of a complaint about any misconduct or suo motu and on his being satisfied about the need of holding an inquiry under procedure, the chairman of the Divisional Board may entrust the inquiry into the alleged misconduct to any member / member of the Divisional Board other than the members of the standing committee (herein referred to as inquiry officer).*

***4(b)** – The chairman of the Divisional Board may delegate his powers under the foregoing clause to the Divisional Secretary.*

After going through the Rule 4(a) and 4(b) it emerges that, if the Chairman of Divisional Board is satisfied about need of holding inquiry, he can entrust the inquiry to any 'member of Divisional Board' other than the members of Standing Committee. This power of Chairman can be delegated to Divisional Secretary. Therefore, there remain no doubt that, Respondent No.2, Divisional Secretary has full powers to appoint Inquiry Officer. However, as per Rule 4(a) the inquiry should be entrusted to any member of Divisional Board other than the member of Standing Committee. In the case at hand the inquiry is entrusted to Block Education Officer, who is not member of Divisional Board. Thus as pointed out by Advocate for the petitioner, the appointment of Inquiry Officer itself is illegal. The learned Advocate for respondents tried to justify this appointment on the ground that, no member of Divisional Board was available at that relevant time. However, such lame explanation cannot be accepted, when the pleading of respondent is absolutely silent about non availability of member of Divisional Board as Inquiry Officer.

10. The main attack of learned Advocate for the petitioner is regarding not awarding proper opportunity to the petitioner to defend herself in the inquiry held by the Inquiry Officer, regarding the allegation of unfair means alleged to be practiced by her during HSC

examination. He has drawn our attention to Rule 5(a) and 5(b) of procedure for inquiry, which reads as under :

5(a) – *On any inquiry being entrusted to the Inquiry Officer, he shall give notice in writing to the candidate and / or the members of the staff concerned setting out there in the nature of the misconduct alleged against him and calling upon him to show cause within the time to be stipulated by him which shall not be more than 15 days from the issue of the notice as to why penalty as provided for in clause 14 of the Procedure should not be imposed on him. Such notice shall also set out the punishment that may be imposed on the Candidate or member of the staff as the case may be. Such notice shall be sent under Registered Post Acknowledgement Due.*

5(b) – *The Inquiry Officer to the candidate concerned by such notice an opportunity to inspect the relevant documents which are proposed to be relied upon during the inquiry and shall give inspection of the said documents in his office on the day and at the time appointed by him in such notice.*

A bare glance at Rule 5(a) of procedure for inquiry makes it clear that, the first stage the Inquiry Officer must follow is that, he shall give notices in writing to the candidate against whom inquiry is initiated regarding use of unfair means and in that notice the Inquiry Officer shall set out the nature of misconduct alleged against that student and calling upon him to show cause within the time, not more than 15 days from the date of issue of notice as to why penalty as provided for in clause 14 of the procedure should not be

imposed on that student. This rule also provides that, such notice shall also set out the punishment that may be imposed on candidate (student). The mandatory requirement of this Rule is that this notice shall be sent under Registered Post Acknowledgement Due. According to the learned Advocate for petitioner neither such notice was served upon the petitioner by Inquiry Officer in compliance with Rule 5(a) nor such notice is placed on record, which shows that, all particulars are mentioned in the notice as mandated under Rule 5(a).

11. Learned Advocate for the respondent has drawn our attention towards notice dated 27.10.2015, 28.10.2015 and submitted that, these notices were served to the petitioner by Inquiry Officer before holding the inquiry.

12. However, after going through these notices it emerges that, these notices were issued by Respondent No.2 to 'Center Incharge of Examination Center 208, Ahmednagar'. Notices nowhere reflect that, it was addressed to the petitioner. In these notices, nature of the misconduct alleged against the petitioner, nature of the punishment which may be imposed on the petitioner, are not mentioned, which are the basic requirement of Rule 5(a) of the procedure for inquiry. So also no document is placed on record by learned Advocate for the respondent to show that, these notices were

sent under Registered Post Acknowledgement Due and such notices were served to the petitioner giving an opportunity to submit her say, as provided under Rule 5(a) of procedure for inquiry. Thus, there is total breach of Rule 5(a) of procedure for inquiry.

13. Rule 5(b) of this procedure for inquiry further provides that, opportunity should be given to the student against whom inquiry is initiated to inspect the relevant documents proposed to be relied by the department and date and time of such inspection shall be mentioned in the notice issued under Rule 5(a). However, obviously the above referred notices nowhere indicate that, such opportunity of inspection of the documents was awarded to the petitioner, at any particular date and time fixed by the Inquiry Officer for inspection. Thus, I have no hesitation to hold that, while conducting the inquiry against the petitioner, the respondents committed total breach of Rule 5(a) and 5(b) of procedure for inquiry.

14. Rule 7 of procedure for inquiry, reads as under :

7 – The witnesses produced during the inquiry shall be subject to cross-examination but the standard of cross-examination may not be the same as in the courts of law or in inquiries before or conducted by person learned in law. Similarly admissibility and reliability of documents will be considered by the Inquiry Officer with regard to the nature and purpose of the inquiry and with sense of fairness towards the person under inquiry and with due consideration of the

public interest.

Rule 7 of procedure for inquiry further provides that, witnesses produced before the inquiry should be subjected to cross-examination by the student against whom the inquiry is initiated. Though learned Advocate for respondent has placed on record copies of statements of the witnesses relied by the Inquiry Officer, admittedly opportunity of cross-examination of these witnesses is not awarded to the petitioner. The explanation given by respondents in their reply as well as during argument is not at all acceptable for the reason that only because petitioner did not examine defence witness, it does not mean that, she cannot cross-examine the witnesses examined during the inquiry. Thus, obviously respondents and Inquiry Officer have committed total breach of Rule 7 of procedure for inquiry.

15. Rule 9 of the Procedure for Inquiry reads as under :

9 – All documentary or other evidence which may be collected or recorded shall be admissible as an evidence and may be relied upon by the Inquiry Officer. However, the person under inquiry shall have an opportunity to refute such evidence and if properly refuted may / be rejected by the Inquiry Officer.

This Rule 9 provides that, opportunity must be given to the student facing inquiry to refute the evidence which may be relied upon by the Inquiry Officer. However, from the reply of respondents

as well as the documents placed on record it becomes crystal clear that, no such opportunity was awarded to the petitioner by the Inquiry Officer to refute evidence relied by him.

16. Thus, we are fully satisfied that, the inquiry conducted by Block Education Officer against petitioner regarding the alleged unfair practices during HSC examination held in the month of February-March, 2015, is totally against the rules of Procedure for Inquiry. The respondents have also totally committed the breach of rule of natural justice. On this count alone the entire inquiry conducted against the petitioner and the impugned order passed by Respondent No.2 against the petitioner as well as consequential action taken by Respondent No.2 is vitiated as illegal. It follows that, impugned order passed by Respondent No.2, dated 26.11.2015 and the consequential notification dated 26.11.2015 deserve to be quashed by allowing this Writ Petition.

ORDER

- (1) Petition is allowed in terms of prayer clause “a” and “e” of the petition.
- (2) The impugned order dated 26.11.2015 passed by Respondent No.2 and the consequential notification dated 26.11.2015 issued at the instance of respondent

are quashed and set aside.

- (3) Respondent No.2 is directed to issue fresh HSC Certificate and Marksheet of the examination held in the month of February-March, 2015, to the petitioner within period of four weeks from the date of this order.
- (4) Rule made absolute. No order as to costs.

(SUNIL K. KOTWAL, J.)

(ANOOP V. MOHTA, J.)

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