

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8592 OF 2017**

Kumari Yogeshree B. Patil

..Petitioner

Vs

State of Maharashtra and anr.

..Respondents

Mr. K.P. Shah for the Petitioner.

Mr. Sandeep Babar, AGP for Respondent No.1- State.

Mr. N.N. Marathe a/w. Mr. V.T. Lokhande for Respondent No.2.

**CORAM : SHANTANU S. KEMKAR &
M. S. SONAK, JJ.**

DATE : AUGUST 4, 2017.

P.C. :

. Heard Mr. K.P. Shah for the petitioner, Mr. N.N. Marathe a/w.
Mr. V. T. Lokhande for respondent No.2 and Mr. Sandeep Babar, AGP for
respondent No.1- State.

2] Rule. With the consent of and at the request of learned counsel
for the parties, Rule is made returnable forthwith. Even otherwise, by order
dated 28th July 2017, we had issued notice to respondent No.2 indicating
that the petition may be disposed of finally at the stage of admission.

3] The petitioner, a minor, aged 16 years has instituted this
petition through her mother in order to challenge communication dated
16th June 2017, which was served upon her on 11th July 2017 under cover

of communication dated 7th July 2017 debarring her up to July 2017 from appearing at the standard 10th (SSC) examination held by the Maharashtra State Board of Secondary and Higher Secondary Education Board, Pune (Pune Board).

4] Along with the reply filed by respondent No.2, copy of decision dated 30th May 2017 taken by the Standing Committee of the Pune Board was produced. Since the impugned communication dated 16th June 2017 is based upon the decision of the Standing Committee, the petitioner was granted leave to amend the petition and challenge the decision dated 30th May 2017 as well.

5] Mr. K.P. Shah has made the following submissions in support of the petition:

A] There is gross breach of principles of natural justice and fair play involved ;

B] The enquiry officer has recorded findings in favour of the petitioner. The Standing Committee, even without disagreeing with such findings, has recommended imposition of penalty. Such exercise, is clearly vitiated by non-application of mind and perversity; and

C] The Supervisor has clearly stated that the petitioner had handed over complete answer paper without any missing pages. There is absolutely no material to establish any unfair means. The impugned communications will leave stigma and physiological scars upon the petitioner, who has throughout had a brilliant career.

6] Mr. Marathe, learned counsel for Pune Board, at the outset placed reliance upon *Board of High School and Intermediate Education vs. Bagleshwar Prasad – AIR 1966 SC 875* and *Maharashtra State Board of Secondary and Higher Secondary Education. Vs. K.S. Gandhi – 1991 AIR SCW 879*, to submit that the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India must not interfere with decisions of academic bodies in matters of resort of unfair means by students. He submits that the instructions issued to the students were very clear in that it was the responsibility of the students to verify whether the answer-sheet supplied to them was complete and in good shape. Further, the Pune Board rules clearly specify that destruction of one's own or any other students' answer-sheet or even any attempt in this regard, constitutes unfair means. The Standing Committee, which is not bound to assign any reasons has concluded that the petitioner tore off or destroyed pages 17 and 18 of her answer-sheet in subject Marathi and such conclusion is

immune from judicial scrutiny. The penalty imposed is therefore, appropriate and warrants no interference.

7] Mr. Marathe submitted that after the petitioner handed over her answer-sheet to the Supervisor, the same was made over to several prescribed officers / agencies until it reached the hands of the examiner. The examiner noted the missing pages and made a report. He submits that none of the officers/agencies had any interest in tampering with the petitioner's answer-sheet and therefore, the responsibility for the missing pages lies squarely on the petitioner alone. Mr. Marathe conceded that the petitioner was a good student and had even answered all the questions in Marathi paper and even secured good marks. However, he submits that rules with regard to unfair means have to be strictly implemented. He submits that the petitioner may have denied the allegation but then, no student, who indulges in unfair means will ever admit indulgence. Mr. Marathe submitted that the debarment was only up to July 2017 and since this period is almost over, this petition is rendered infructuous. For all these reasons, Mr. Marathe urged that the petition may be dismissed.

8] We have considered the rival contentions. We have also perused the material placed before us by respondent No.2, which includes, the actual answer-sheet of the petitioner and the decision of the Standing

Committee dated 30th May 2017. For reasons indicated hereafter, we are satisfied that the petitioner has been treated unfairly by the Unfair Means Committee (Standing Committee) and the impugned communication and decisions are unsustainable.

9] In the first place, the Pune Board, did not even bother to communicate the decision of the Standing Committee dated 30th May 2017 to the petitioner. The same was made known to the petitioner only today, in the form of annexure to the affidavit-in- reply. Secondly, even the communication dated 16th June 2017 debarring the petitioner up to July 2017, was communicated to the petitioner only on 11th July 2017, as if, to render her access to justice difficult, if not impossible. The Pune Board, relying upon its own delay, went to the extent of urging that this petition is rendered infructuous. The impugned action casts a stigma upon the petitioner, who has otherwise had a brilliant career. Obviously, therefore, there is no question of the present petition being rendered infructuous.

10] The show cause notice dated 6th May 2017 issued to the petitioner hardly complies with principles of natural justice and fair play. We have perused the show cause notice and we find that it does not even briefly refer to any charge against the petitioner. The notice gives no indication whatsoever of the charge against the petitioner. The notice

merely requires the petitioner to remain present on 9th May 2017 at 11.00 a.m. to attend “*confidential enquiry*”.

11] On 9th May 2017, it appears that the petitioner was presented with a cyclostyled format to note down her say in the matter. The petitioner, in her own handwriting (Annexure-F - page 45), has squarely denied her involvement in tearing or misplacement of pages 17 and 18 of her answer-sheet.

12] The Pune Board has also produced the statement of Shri.V.B. Choudhary, the Supervisor, at Annexure – G (page 47), in which, he has clearly stated that when he collected the answer-sheet from the petitioner, he had specifically checked the number of pages and upon satisfaction that the same were in order, had forwarded the same to the prescribed officers/agencies. Mr. Choudhary has stated that the pages had not gone missing at his level.

13] The Pune Board has also produced the enquiry report (Annexure-H – page 49), in which, the conclusion drawn is that the allegation against the petitioner does not stand proved. In fact, the enquiry officer has recommended the declaration of result of the petitioner.

14] Then comes the impugned decision of the Unfair Means Committee (Standing Committee) dated 30th May 2017 at Exhibit-I (page 51). This decision after recording the conclusion and recommendation of the enquiry officer, without anything more and in quite an abrupt manner records that the Committee after deliberations unanimously proposes the award of penalty in terms of instruction No. 17, i.e., debarring the petitioner for 1 + 1 exams.

15] On 16th June 2017 and 22nd June 2017, the petitioner's parent, made detailed representation and it is perhaps in response to the same that the impugned communication dated 16th June 2017 was communicated to the petitioner only on 11th July 2017.

16] We find that this a clear case of perversity. The enquiry officer, who is the fact finding authority had very correctly exonerated the petitioner of any wrong doing. The Supervisor to whom the petitioner had submitted her answer-sheet, has clearly backed the petitioner and stated that she had handed in the complete answer-sheet and the misplacement of pages 17 and 18 was not at the level of the Supervisor. Once the answer-sheet was handed over to the Supervisor, the petitioner, obviously, had no access to her answer-sheet. According to Mr. Marathe's contentions, the answer-sheet then passed through several hands. Upon due consideration of

the entire material on record, the enquiry officer, very correctly, exonerated the petitioner and recommended declaration of her result. In such circumstances, the Standing Committee, was not at all justified in imposing or recommending the imposition of any penalty upon the petitioner. From the perusal of decision dated 30th May 2017, it is clear that the Standing Committee has not even recorded any disagreement with the findings of the enquiry officer. The impugned decision of the Standing Committee is vitiated by non-application of mind and perversity.

17] In *Bagleshwar Prasad (supra)*, the enquiry committee had recommended the cancellation of the examinees result. The enquiry itself had been fair and proper. There was material in support of the charge. It is in these circumstances that the Hon'ble Supreme Court had held that the Court should be slow to interfere with decisions of domestic tribunals appointed by educational bodies. In the present case, we are not interfering with the decision of the enquiry officer, rather, we are affirming the decision of the enquiry officer exonerating the petitioner. Thus construed, *Bagleshwar Prasad (supra)* assists the case of the petitioner rather than the Pune Board.

18] In *K.S. Gandhi (supra)*, the Supreme Court was dealing with a case of mass copying. Again, the enquiry officer, on the basis of admission

of the students had recorded findings of guilt. Since, the facts in the present case are quite to the contrary, *K.S. Gandhi (supra)*, is of no assistance to the Pune Board.

19] We are unable to agree with Mr. Marathe's contention that decisions of academic bodies, in cases concerning unfair means are immune from judicial review. No doubt, as held in *Bagleshwar Prasad (supra)*, courts should be slow to interfere in such matters. However, where there is violation of principle of natural justice and further, where the decision is vitiated by perversity and non-application of mind as in the present case, interference is almost a duty.

20] We have examined the Marathi answer-sheet submitted by the petitioner. The same is corrected by the examiner and moderated by the moderator. Both have awarded her 67 marks. There is no denial that the petitioner as even otherwise, had brilliant career. The petitioner hails from Valvad, Taluka Barshi, Dist. Solapur. In the representations made by her parents, it has been repeatedly pointed out that she has always had a brilliant career scoring over 90% marks. Even mark-lists, in support were forwarded to the Pune Board. We are satisfied that the petitioner has been treated unfairly in the present case. The impugned decisions are clearly unsustainable.

21] Accordingly, we quash and set aside the impugned decision dated 30th May 2017 and communication dated 16th June 2017. Further, we direct the Pune Board to declare the petitioner's result within a period of one week from today. Taking into consideration the peculiar facts and circumstances of the present case, we direct that the respondents to consider the case of the petitioner for admission to standard 11th as per her entitlement and her merit or in any case, not to deny her such admission on the ground of any delay in securing this result. We also direct the Pune Board to pay costs of Rs.7500/- to the petitioner within a period of four weeks from today.

22] Rule is made absolute in the aforesaid terms.

23] At this stage, Mr. Marathe applies for stay for a period of four weeks. We are satisfied that this is not fit case for grant of stay. The petitioner, who is but 16 years of age and has throughout had a brilliant career has suffered enough and we are not prepared to prolong her suffering any further.

(M. S. SONAK, J.)

(SHANTANU S. KEMKAR, J.)