

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.23352 OF 2017

Sudarshan Anna Ugale and others

..Petitioners

Versus

**The Secretary, Maharashtra State,
Technical Education Board and others**

..Respondents

Mr. Kishor Patil a/w Mr. R. M. Haridas for the Petitioners.

Mr. Mihir R. Govilkar i/by Mr. R. V. Govilkar for the Respondent No.1.

Mr. Keshav Borhade for the Respondent No.2.

Mr. C. P. Yadav, AGP for the Respondent No.3.

CORAM : B. R. GAVAI &

SANDEEP K. SHINDE, JJ.

DATE : 3rd OCTOBER, 2017

PC.

1] Rule. Rule made returnable forthwith. Heard by consent.

2] The Petitioners by way of the present Petition impugn the order dated 5th July, 2017 passed by the Respondent No.1, thereby holding that the Petitioners alongwith the other students totalling 209, had indulged into malpractices and thereby have been debarred from their appearance in the examination of summer 2017 plus one additional examination.

3] Heard Mr. Kishor Patil, learned counsel for the Petitioners, Mr. Govilkar, learned counsel for the Respondent No.1 and Mr. Keshav

Borhade for the Respondent No.2.

4] It is the contention of the Petitioners that prior to passing of the impugned order, the Respondent No.1 had not followed the mandatory procedure as required under Regulation 10 of the Regulations which govern the conduct of examination by the Respondent No.1. It is further submitted that no proper show-cause notice was given to the Petitioners to reply to the allegations made against them. It is further submitted that by applying the procedure of random scrutiny, as many as 209 students have been debarred at one stroke.

5] The learned counsel Mr. Govilkar on behalf of the Respondent No.1 on the contrary submits that the Respondent No.1 had followed the procedure as prescribed under the Regulations. He submits that a committee of three experts was appointed and on the basis of the findings of the said committee, the impugned action has been taken.

6] The learned counsel for the Respondent No.2 on the contrary submits that the procedure followed by the Respondent No.1 was totally faulty. He submits that a notice of which was scheduled on 26th May, 2017 and was given to the college on 23rd May 2017 and within such a short period, it was not possible to give notice to all the students.

7] A perusal of the impugned order reveals that the Respondent No.1 by one stroke has debarred 209 students on the ground that the students have indulged into mass copying. In the affidavit in reply, it is stated by the Respondent No.1 that the examination was conducted by the Respondent No.2 which is situated at Ahmednagar and the assessment was done at A. G. Patil Polytechnic Institute, Solapur. It appears that the impugned action has been taken by the Respondent No.1 on the basis of the report submitted by A. G. Patil Polytechnic Institute, Solapur.

8] It would be relevant to refer to clause (C) of Regulation 10, which reads thus :-

“C) Copying Cases Detected In Assessment Center

When a case of copying or misconduct is detected by an examiner at the assessment center (RAC) or at the place of assessment while assessing the answer-books, the examiner shall report it to the Officer-in-Charge of the assessment centre or the Secretary, as the case may be, along with his observations. The Officer-in-charge of the centre shall report such cases along with the report of the Examiner/s to the Secretary. The Secretary shall cause an enquiry into the matter and place all such cases along with enquiry report/s before the Special Committee for its final decision in this regard.

The Special Committee shall recommend the penalties/punishments in all above cases referring guideline document mentioned under F(IV) below.

The Director of Board shall have the power to cancel the result of such defaulting candidate in the examinations at which he (the candidate) appeared and also to debar him from subsequent examinations, either permanently or for such a specified period as the Special Committee may deem fit, in all above cases.”

A perusal of the said Regulation would reveal that, when a case of copying or misconduct is detected by an examiner at the assessment center (RAC) or at the place of assessment, the Secretary or the officer in-charge is required to send such a report alongwith report of the Examiner/s to the Secretary. The Secretary thereafter is required to cause an enquiry into the matter and place all such cases alongwith enquiry report before the Special Committee for its final decision in this regard.

9] In the present case, it appears that the entire action is initiated at the instance of institute, where the assessment was done. The show-cause notice is issued at the instance of A. G. Patil Polytechnic Institute, Solapur. The entire enquiry is conducted by the same institute. The initial report is also prepared by the three assessors of the said college. No doubt that the said material is placed before the committee consisting of three persons under the Chairmanship of Prof. Swati Deshpande. However, a perusal of the report of the Enquiry Committee of the said A. G. Patil Polytechnic Institute, Solapur as well as the report of the Special Committee under the Chairmanship of Prof. Swati Deshpande

would reveal that neither the Enquiry Committee nor the Special Committee have come to a final conclusion that the Petitioner and other students had indulged into malpractices. The report of the Enquiry Committee as well as the decision of the Special Committee would reveal that the Enquiry Committee as well as the Special Committee are of the opinion that there is a possibility of students having engaged into malpractices.

10] We are of the considered view that without affording an appropriate opportunity of hearing to the students, such a drastic action could not have been taken. No doubt, that the principles of natural justice cannot be put in a straight jacket formula. However, while following the principle of natural justice, it would be required that an opportunity of hearing is given in a real sense. We are of the considered view that in the present case, directing the Respondent No.2 to inform the Petitioners who were 209 in number, of the proposed action to be taken by the Respondent No.1 against them in short period of two days, cannot be said to be compliance with the principles of natural justice.

11] It would be relevant to refer to the judgment of the Lordships of the Apex Court in **Rajesh Kumar and another Vs. Institute**.

of Engineers (India)¹, wherein Their Lordships observed that similarity in the answer books could be as a result of the preparation from the same textbook as available in the market. In the present case, the Enquiry Committee has also come to a conclusion that the possibility of the teachers of the Respondent No.2 helping the students cannot be ruled out. We are of the considered view that unless a specific show-cause notice was given to the Petitioners and the other students to explain the circumstances as are appearing against them and an appropriate opportunity of being heard was given to them, a drastic action would not be permissible in law.

12] In the result, Rule is made absolute in terms of prayer clause (a).

[SANDEEP K. SHINDE, J]

[B. R. GAVAI, J]

¹ AIR 1998 Supreme Court 5.