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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7724 OF 2018

Harshwardhan s/o Raju Polsane
Age : 17 years, Occu. Student
Through his legal Guardian
Raju Vitthalrao Polsane,
Age : 52 years, Occu. Service,
R/o Chelipura,
Tq. & Dist. Aurangabad

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai

2. Government Polytechnic
Osmanpura, Aurangabad
Through its Principal

3. Unfair Practice Enquiry Committee
Government Polytechnic College
Osmanpura, Aurangabad

..RESPONDENTS

Mr V.S. Kadam, Advocate for petitioner;
Mr S.M. Ganachari, A.G.P. for respondents

**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 6th August, 2018

ORAL ORDER:

Heard learned Counsel appearing on behalf of the parties.

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2. By the present petition the petitioner challenges the communication dated 29th May, 2018 issued by respondent no.2, whereby his whole performance of second semester examination of Diploma in Electrical Engineering held in April-May, 2018 is cancelled.

3. Mr V.S. Kadam, learned Counsel appearing on behalf of the petitioner submitted that the petitioner is a meritorious student and after passing secondary school examination with 89.40% marks he was admitted in Govt. Polytechnic college for the course of Diploma in Electrical Engineering. Mr Kadam then submitted that the petitioner appeared for November-December, 2017 examination and he was declared successful in the same. A copy of the said document is placed on record at Exh.B. Mr Kadam then submitted that the petitioner appeared for the next semester examination scheduled in April-May, 2018. The petitioner was issued notice to show cause. It was stated in the notice that while appearing for April-May, 2018 examination for the paper of Fundamentals of Electronics, the petitioner was found in possession of a mobile phone in the examination hall. As such the notice was issued to the petitioner to show cause and attend the inquiry scheduled on 19th May, 2018, at 11.00 a.m. in the premises of Government Polytechnic, Aurangabad.

4. Mr Kadam submitted that the petitioner was awarded punishment of cancellation of his performance and the certificate of marks issued to the

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petitioner refer to the result as "fail in all subjects". It also refers to cancellation of the performance of the petitioner by denoting the words "CPS". A copy of the statement of marks is placed on record at page 19. Mr Kadam then submitted that though the petitioner committed a mistake by carrying the mobile phone in the examination hall, he was not indulged in any act which is serious in nature and forms an act of malpractice. Mr Kadam further submitted that even in the show cause notice it is not alleged that the petitioner was found in the examination hall using the mobile phone, but the notice only states of possession of the mobile phone. Mr Kadam submitted that the punishment awarded to the petitioner is harsh and is disproportionate to the alleged act of possession of mobile phone in the examination hall. Mr Kadam then submitted that there was no ill intention of the petitioner of using the mobile phone but only due to inadvertence the mobile phone was carried in the examination hall. As no ill intent is attached to the act of the petitioner, the respondents be directed to take a fresh decision on the aspect of punishment awarded to the petitioner.

5. Learned Asstt. Govt. Pleader appearing on behalf of the respondents invited our attention to the affidavit filed on behalf of respondents no.2 and 3. Learned A.G.P. submitted that the authorities are bound by the set of Rules framed insofar as the malpractices and punishments are concerned. He then invited our attention to the copy of the hall ticket placed on record along with affidavit at Exh.R-1. He submitted that the petitioner was also

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having the hall ticket and as such the petitioner in particular and the students community in general appearing for the examination having the hall ticket were made known that carrying of any such material in the examination hall including a mobile phone is completely prohibited. The warning in the hall ticket further makes it clear that for the act of such malpractice in the examination, the student may suffer the punishment of cancellation of full performance. Then the learned A.G.P. also invited our attention to the reply submitted by the petitioner in the process of inquiry and in the inquiry the petitioner admitted that he was carrying mobile phone with him in the examination hall. Then learned A.G.P. invited our attention to the Rules framed to that effect. The Rules are of 8th August, 2017 and the copy of the Rules states that the Rules are to be implemented for the examination to be conducted in the academic year 2017. Perusal of the Rules show that they deal with the exhaustive list of the nature of malpractices and then the punishments provided for these malpractices. The malpractice which the petitioner committed as per the show cause notice and as per the final order at Sr. No.23 reads thus:-

"Examinee possessing mobile phone or any electronics communication gadget or I-pod or any similar device in examination hall" and the punishment provided is cancellation of full performance in current examination/s and forfeiture of the device or gadget and penalizing the institute as pronounced by special committee. "

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6. The report of the inquiry committee is also placed on record. The inquiry committee members unanimously observed that the petitioner was found guilty as per Sr. No.23 of the nature of malpractice possessing of mobile phone in the examination hall. Then the case of the petitioner was submitted before the special committee. The meeting of the committee was scheduled on 22nd May, 2018.

7. Learned A.G.P. submitted that the petitioner was not the sole candidate facing the malpractice of carrying the mobile phone in the examination hall. One other student by name Ubale Abhijit Subhash was also similarly situated with the petitioner and the punishment to both these students, namely, the petitioner and Ubale is one and the same i.e. cancellation of performance. Learned A.G.P. then submitted that a challenge was raised before this Court to the punishment awarded against the malpractice and by order dated 22nd January, 2018 passed in Writ Petition No.767 of 2017 the Division Bench of this Court was not inclined to show any interference in the order impugned. The Division Bench in the order dated 22nd January, 2018 clearly observed that the decision taken by the authority was in conformity with the Rules of 8th August, 2017. Consequently, the petition was rejected.

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8. In the light of the aforesaid discussion, in our opinion, the respondents - authorities committed no error in taking the decision in consonance and conformity with the Rules. Petition being devoid of merit deserves to be dismissed and accordingly the same stands dismissed.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)

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