

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4187 OF 2019

01 Marathwada Law Kruti Samiti,
through its Secretary
Shri Azhar Patel,
age: 24 years, Occ: Student,
R/o Lane No.3, Patel Nagar,
Naregaon, Aurangabad.

02 Amar Rajendra Bavshkar,
age: 24 years, Occ: student,
R/o Samarth Chowk, Beed.

03 Shaikh Masud Bilal,
age: 25 years, Occ: student,
R/o Telgaon Naka, Beed.

04 Shrikant s/o Jijaba Bandgar,
age: 24 years, Occ: student,
R/o Samata Nagar, Osmanabad.

05 Jagdish s/o Sakharam Parbalkar,
age: 50 years, Occ: student,
R/o Subhash Nagar, Bandra (East),
Mumbai.

Petitioners

Versus

01 The State of Maharashtra,
through the Secretary,
Higher and Technical Education
Department, Mumbai.

02 Dr.Babasaheb Ambedkar Marathwada
University, Aurangabad.

03 Director,
Examination and Evaluation Board,
Dr.Babasaheb Ambedkar Marathwada
University, Aurangabad.

Respondents

Ms.P.S.Talekar, advocate i/by Talekar and Associates, for the petitioners.

Mrs.P.V.Diggikar, AGP for Respondent No.1.

Mr.S.S.Thombre, advocate for Respondents No.2 and 3.

CORAM : PRASANNA B. VARALE AND

NITIN W. SAMBRE, JJ.

DATE : 03rd April, 2019.

P.C. :

Petitioner No.1 appears to be unregistered Association of students, whereas, petitioners no.2, 3 and 5 - students claimed to have appeared for the First Year LL.B. examination from a Law College at Beed, whereas, petitioner no.4 – student claimed to have appeared from a Law College at Osmanabad, which are affiliated to Respondent No.2-University.

2 It is the case of petitioners that Respondent No.2 University has in all 14 Law Colleges affiliated to it which are administering Three Years and Five Years Law Course. The examination of the First Year of these Law courses was conducted from February 01, 2019 to February 06, 2019. According to the petitioners, in the subjects - Contract-I and Micro-Economics, the questions, to the extent of 90% in the papers framed by the University were found to be similar or reproduction, from the question papers framed by Manikchand Pahade Law College, Aurangabad, in the test examination conducted by the said college in the aforesaid two papers. It is claimed that in the University examination in question, the professors from said college were paper setters of above referred two subjects.

3 In the aforesaid background, the Respondent-University received certain complaints which has prompted

Respondents No.2 and 3 to order re-examination in two subjects, namely Contract-I and Micro-Economics of First Year Law course which is to be held on April 05, 2019 and April 08, 2019, respectively. Respondent No.3 – Examination and Evaluation Board of the University notified the program on March 26, 2019 pursuant to the decision taken on February 25, 2019.

4 While questioning the aforesaid decision of Respondents No.2 and 3 of holding re-examination of the papers of Contract-I and Micro-Economics on April 05, 2019 and April 08, 2019, respectively, the petitioners have chosen to file instant petition.

5 Ms.Talekar, learned Counsel appearing for the petitioners, while objecting the decision of Respondents No. 2 and 3, would urge that the petitioners are penalised for no fault of theirs. According to her, it is not the case of Respondent-University that the question papers in the pre-University examination framed by M.P.Law College were available to the students like petitioners who are from colleges in different districts. She would then urge that Respondent No.3-Board has taken arbitrary decision of holding re-examination, in aforesaid two subjects, that too contrary to the provisions of Maharashtra Public Universities Act, 2016. According to her, at the most, students of the said college i.e. M.P.Law College, Aurangabad, could have been asked to appear for the re-examination and not all the students of 14 affiliated colleges. In addition, by inviting attention of this Court to the provisions of Sections 88, 89 and 39 of the said Act, she submits that the decision of holding re-examination in the two

subjects is without any authority. As such, it is prayed that the petition needs to be allowed by quashing the impugned decision of the Respondents No.2 and 3 ordering re-examination in two subjects.

6 *Per contra*, Shri Thombre, learned Counsel appearing for Respondents No.2 and 3 submits that an emergent meeting of Respondent No.3 – board was held on February 13, 2019 in which, vide Subject No.3, the issue as regards representations received from various students Federations/Associations complaining about above issue was deliberated. All the representations were complaining about the repetition/reproduction of questions in the question papers framed for the students appearing in the examination conducted by the University as also in the test examination conducted by M.P.Law College, Aurangabad. It was resolved that the Committee of Professors be constituted and their report, in that respect, be sought within two days. Accordingly, the Committee of the experts submitted a report and observing as under:

In Contract-I and Micro-Economics Papers, the Committee *prima facie*, found substantial repetition of questions in Internal College Examination and University Examination.

In view of the above, the Committee has unanimously decided to recommend for conducting re-examination of following two papers.

7 The Committee also unanimously recommended for conducting re-examination of Contract-I and Micro-Economics papers.

8 Shri Thombre, then, would urge that on February 25, 2019, accordingly meeting of Respondent No.3 – Examination Committee, under the Chairmanship of Vice Chancellor was conducted and it was resolved that the re-examination in the subjects of Contract-I and Micro-Economics be held.

9 According to Shri Thombre, as the decision is taken by the competent authority to hold re-examination in two subjects, particularly, having accepted the report of experts' committee, which is endorsed by the Examination and Evaluation Board, there is no illegality in the decision of re-examination of two subjects. According to him, there is no question of any illegitimate expectation or that of arbitrary decision in the matter of ordering re-examination in two subjects, as the decision to hold re-examination is based on the report of inquiry committee. As such, he sought dismissal of the petition.

10 Considered rival submissions.

11 Though the learned Counsel for the petitioners has relied upon provisions of Section 39 of the Act, which prescribes, powers and duties of the Board of Sub-Campuses of the University, this Court hardly notice any power vested in the said board to deal with the issue of holding re-examination.

12 Section 88 provides for mechanism for declaration of schedule of examinations for the next academic year and choice

based credit system of evaluations for each course. Section 89 provides for declaration of results within a period of thirty days from the last date of the examination for that particular course and such declaration is said to be not later than 45 days. It further provides for submission of report by the Director of Board of Examination and Evaluation for such delay in declaring the results beyond the period of forty-five days.

13 So far as the Board of Examination and Evaluation is concerned, by virtue of provisions of Section 90 of the Act, it is provided that the examinations and evaluation are not invalid for non-compliance of the schedule, provided under Sections 88 and 89 of the Act.

14 In the aforesaid background, the claim of the petitioners that there is no adherence to the provisions of Sections 88 and 89 while ordering re-examination is hardly of any consequence.

15 Apart from above, what can be noticed is, the provisions of Sections 88 and 89, which provide for examination and evaluation, declaration of results, will not be attracted in the facts of the present case, particularly, when the contingency, under which Respondents No.2 and 3 are required to hold the re-examination, is not covered under the said provisions.

16 Rather, it can be noticed that the provisions of Section 89, are sought to be relied upon, completely out of context of the facts of the instant case. Section 89, which provides for

examination and evaluation, is with an intention to take care of routine academic calendar for the purpose of completion of prescribed academic course and holding timely examination in a University. In fact same has already been acted in the case in hand as the University has already held the examination pursuant to the said provision in the month of February, 2019.

17 The circumstances, which prompted the authority under Section 47, is dealing with an eventuality, which has been cropped up because of certain indisciplined events that took place, which were noticed after the said examination. Section 47 of the Act provides for the board of examination and evaluation, with whom the authority in respect of matters relating to examination and evaluation, is vested. The said board, in law, is also empowered to oversee the conduct of examination. Section 48 of the Act provides for powers and duties of the board of examination. Clause (b) of Sub-section (1) of Section 48 empowers the board to ensure proper organization of examinations and tests of the University. Clause (d) thereof provides for arranging for strict vigilance during the conduct of examinations so as to avoid use of unfair means by the students, teachers, invigilators, supervisors, etc. Clause (k) of sub-section (1) of Section 48 provides for hearing and deciding the complaints relating to examinations and evaluations. Clause (l) provides for exercising such other powers in relation to examinations and evaluation, as may be assigned to it by or under this Act. As such, on bare reading of clause (b) of sub-section (1) of Section 48 with clauses (k) and (l), in our opinion, the decision of Respondent No.3-Examination and Evaluation Board of the University directing to hold re-examination in two subjects,

which is impugned in the present petition, appears to be within the powers of the University and Board. There is no express embargo or statutory limitations on the powers of the Respondents to infer that the re-examination in the given situation like the one reflected in the instant petition, cannot be ordered, particularly when the same is based on inquiry report, as was called by the Board of Examination and Evaluation.

18 The Apex Court, in the matter of **Director (Studies), Dr.Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh & others Vs. Vaibhav Singh Chauhan**, reported in (2009) SCC 59, had an occasion to deal with the interference by the High Court in the education matters under Article 226 of the Constitution of India, in the backdrop of allegation of *malpractices*, cheating/copying in the examination, etc. The Apex Court, in para 12 of the said judgment, has observed thus:

“12 The learned Single Judge in the interim order has then emphasised on the fact that the respondent had apologised and had confessed to the possession of the chit. In our opinion, this again is a misplaced sympathy. We are of the firm opinion that in academic matters, there should be strict discipline and malpractices should be severely punished. If our Country is to progress, we must maintain high educational standards, and this is only possible if malpractices in the examination in educational institutions are curbed with an iron hand.”

19 Similar issue also came up before the Apex Court in the matter of **Vice Chancellor, Guru Ghasidas University Vs.**

Craig Macleod, reported in (2012) 11 SCC 275. While dealing with the interference by the High Court, in exercise of extraordinary jurisdiction under Article 226 of the Constitution, in paragraph 15, the Apex Court has observed thus:

15 The turn of events, given the lapse of time, did not form a legal basis for interdicting completion of the inquiry against Craig MacLeod. While the High Court may have intended to bring a quietus to the entire episode, it should have kept in mind that maintenance of discipline in the University is equally important for a conducive academic environment and that the larger interests of a student. In *Varanaseya Sanskrit Vishwavidyalaya v. Rajkishore Tripathi* it was observed that in matters of discipline or administration of the internal affairs of a university, the courts should be most reluctant to interfere.

20 Apart from above, in the matter of **Madhyamic Shiksha Mandal, M.P. Vs. Abhilash Shiksha Prasara Samiti & others**, reported in (1998) 9 SCC 236, the Apex Court has dealt with the issue of copying. In the said matter, it was brought to the notice of the Apex Court that the Board of Examination has ordered re-examination and while dealing with the alternatives, which were available to the Board, in an eventuality like the present one, the Apex Court, in para 2, has observed thus:

2 We feel a little distressed that in matter like this the High Court should have interfered with the decision taken by the Board. The contention was that the examination was cancelled on the report of a Naib Tehsildar

dated 18-3-1996 who was not authorised by the Board to visit the examination centre. It is irrelevant whether the Naib Tehsildar was authorised by the Board to visit the centre or not but what is of importance is the fact that he did visit the centre and found the students copying even before the question papers were distributed. This clearly implies that the students were aware of the questions indicative of the leakage of the question paper. This Naib Tehsildar even complained that the teachers did not object to the students entering the examination hall with books and copying material. That would mean that either they were hand in glove with the students or, they were, for some reason not able to stop the students from copying. This is also evident from the report of the Superintendent of the Centre. The Naib Tehsildar states that neither the Superintendent of the Centre nor the invigilators were prepared to interfere and were not able to explain how the students could enter the hall with books, etc., and copy therefrom with impunity. The Superintendent of the Centre states that he had requested the Naib Tehsildar to stay for three hours but the Naib Tehsildar did not stay. The report of the valuers at p. 81 also goes to show that there was mass copying. The High Court brushed it aside as subsequent material. But it supports the Board's decision and it was improper in a sensitive matter like this to ignore it on such a technical ground. In the face of this material, we do not see any justification in the High Court having interfered with the decision taken by the Board to treat the examination as canceled. It is unfortunate that the student community resorts to such methods to succeed in examinations and then some of them come forward to contend that innocent students become victims of such misbehaviour of their companions. That cannot be helped. In such a situation the Board is left with no alternative but to cancel the examination. It is extremely

difficult for the Board to identify the innocent students from those indulging in malpractices. One may feel sorry for the innocent students but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far as this examination was concerned. It had no alternatives that were available to it so far as this examination was concerned. It had no alternative but to cancel the results and we think, in the circumstances, they were justified in doing so. This should serve a lesson to the students that such malpractices will not help them succeed in the examination and they may have to go through the drill once again. We also think that those in charge of the examinations should also take action against their Supervisors/Invigilators, etc., who either permit such activity or become silent spectators thereto. If they feel insecure because of the strong-arm tactics of those who indulge in malpractices, the remedy is to secure the services of the Uniformed Personnel, if need be, and ensure that students do not indulge in such malpractices.”

21 In the aforesaid background, what can be inferred is, the decision of the University in ordering re-examination of the two papers is within its statutory powers, as could be rightly inferred from Section 48 of the Maharashtra Public Universities Act, 2016. There is no issue of any arbitrariness, particularly, in the backdrop of the inquiry report submitted by the Committee constituted by the Board of Examination and Evaluation, particularly, having regard to the material before it. The tendering of representations by the students bodies has prompted the authorities to dwell upon the complaint and reach to a conclusion that out of the three subjects, which were complained of, some serious irregularities are noticed in two papers and as such, re-examination was ordered.

22 The Respondent-University and the Board of Examination and Evaluation, to whom, in the given situation, had no other alternative, were justified in ordering re-examination and that being so, we hardly notice any illegality or irregularity in the decision of the Respondent-University and Board.

23 Petition, as such, fails and stands dismissed.

NITIN W. SAMBRE
JUDGE

PRASANNA B. VARALE
JUDGE

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