

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6453 OF 2018

URMILA GANESH LONKAR
THROUGH FATHER GANESH NARAYAN LONKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Kanade Angad L.
AGP for Respondents No. 1: Mrs. V. N. Patil Jadhav
Advocate for Respondents No. 2 & 3 : Ms. Surekha
Mahajan
Advocate for Respondent No. 4 : Mr. Nade Subhash S

CORAM: S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.

DATE: 24th JANUARY, 2019

PER COURT :

1. Mr. Kanade, learned counsel for the petitioner submits that the petitioner's performance in the examination has been cancelled on the ground of mal-practice. The petitioner was never served with any notice of the enquiry conducted by the respondents / Authorities. The petitioner has not indulged into any mal-practice. At the examination hall also; the invigilator at no point of time had reprimanded the petitioner.

If at all the petitioner would have indulged in any mal-practice, then the invigilator himself would have taken action. As the petitioner has not indulged in mal-practice, the impugned order be set aside and the respondents be directed to declare the result.

2. Miss Mahajan, learned counsel for the Board submits that the usual practice is to sent notice to the Headmaster and Headmaster is required to inform the student of the date of hearing. The notices have been sent to the Headmaster. The learned counsel submits that upon service of notices as the petitioner did not appear, considering the facts on record the decision has been rightly taken. Two notices were sent to the Headmaster.

3. The learned counsel for respondent no. 4 submits that respondent no. 4 did not receive any notice from the Board. In view of that, the communication was never made to the petitioner of

the enquiry.

4. We have perused the record produced by the learned counsel for the Board. From the said record it nowhere appears that the said notice was served upon the petitioner. The enquiry is *ex-parte*. Considering the fact that it is a question of the educational career of the petitioner and that there is no proof of the service of notice of enquiry upon the petitioner or intimation of the enquiry to the petitioner, we are inclined to grant one more opportunity to the petitioner.

5. The petitioner shall appear before the Committee of respondent no. 3 on 04.02.2019. The petitioner may file his say. The committee shall thereafter consider the say of the petitioner and after following principles of natural justice; take decision afresh with regard to the performance of the petitioner. While taking the decision afresh, the impugned order would not be an impediment.

6. The learned counsel for the Board shall give the copy of the notice to the petitioner immediately. It is submitted that the copy of the notice is given to the petitioner.

7. Writ Petition is disposed of. No costs.

[A. M. DHAVAL, J.] [S. V. GANGAPURWALA, J.]

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