

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11032 OF 2023

Sanket S/o Suresh Suryawanshi

.. Petitioner

Versus

- 1] The State of Maharashtra
Through its Principal Secretary,
Higher Education Department,
Mantralaya, Mumbai – 32
- 2] The Director,
Higher Education,
Maharashtra State, Central Building,
Pune
- 3] The Registrar,
Swami Ramanad Teerth Marathwada
University, Nanded
- 4] The Principal,
Shivaji Law College, Parbhani
- 5] The Controller of Examination,
R/o S.R.T.M.U. Nanded,
As per address of respondent no. 3

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Advocate for petitioner : Mr. Mahesh P. Kale
AGP for the respondent – State : Mr. K.N. Lokhande
Advocate for respondents 3 and 5 : Mr. S.R. Bagal
Advocate for respondent no. 4 : Mr. P.R. Bharaswadkar h/f. Mr. R.N. Bharaswadkar

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**CORAM : MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

DATE : 1 DECEMBER 2023

ORAL ORDER (MANGESH S. PATIL, J.) :

Heard both the sides finally at the stage of admission.

2. Rule. Rule is made returnable forthwith.

3. The petitioner who had appeared for fourth semester of B.A.LL.B. course conducted in June 2023, is aggrieved by the decision of the respondent – university to cancel the whole of his performance in that examination.

4. The learned advocate for the petitioner submits that though the ordinance of the respondent – university prescribes the specific procedure to be followed and preceded by the order of inflicting punishment for indulging in malpractice at the examination, it has not been strictly adhered to. The petitioner was not served with any notice to show cause, even his signature on the material from which he is alleged to have copied the answers was not obtained. No opportunity of hearing was extended much less to file any written statement. The punishment has been inflicted in a mechanical manner without passing a speaking order which is inconsistent with the provisions in the ordinance.

5. Learned advocate for the petitioner would submit that since the examination for the fifth semester would be starting from 15

December 2023, he may be permitted to appear for the examination and his performance may be made subject to the final outcome of the decision in the matter of alleged malpractice.

6. The learned advocate for the respondent – university relying on the affidavit in reply which is already filed and the additional affidavit in reply being tendered across the bar, submits that the procedure contemplated in the ordinance was adhered to. It was a matter of open and shut case. It was noticed by the committee that the petitioner was guilty of adopting unfair means and it was a case of fraud. It noted the reasons based on which the decision was taken to inflict the punishment which is appropriate.

7. Obviously, in exercise of the powers under Article 226 of the Constitution, we would be concerned only with the decision making process and may not be able to indulge into the realm of the disputed factual issue, as to if, in-fact, the petitioner had indulged in some malpractice or otherwise.

8. Bearing in mind this limitation, we can easily decipher the fact that though the procedure has been laid down in the ordinance under the Maharashtra Public Universities Act, 2016 in respect of the matters of the malpractices resorted to by a student at the examination, there are several aspects which seem to have been clearly overlooked

by the respondent – university before inflicting the drastic punishment of cancelling the petitioner's performance in its entirety and not restricted to the specific subject. As per clause (5), signature of the student has to be obtained on the material from which he allegedly copied the answers. As per clause 10(i), a notice to show cause is supposed to be issued to the student, soliciting his explanation. He is thereafter required to be called upon for hearing and extended a reasonable opportunity.

9. Pertinently, clause 11 which prescribes for punishment requires the competent authority which is the Vice Chancellor to pass a speaking order. Even a chart has been provided in respect of the categories of the malpractices and the punishment to be inflicted. This, in turn, would require the decision making authority to apply its mind to justify the punishment which it intends to inflict. From the affidavit in reply, it appears that none of the afore-mentioned steps were followed before passing the impugned order except a notice was issued as contemplated under section 48 (5) of the Maharashtra Public Universities Act, 2016. More importantly, no speaking or separate order inflicting the punishment much less assigning the cogent and convincing reasons has been passed by the competent authority.

10. The decision regarding unfair means is expected to be taken by the competent authority after following a thorough procedure.

No reasoned order had been passed. The decision is without application of any mind. The degree of punishment which is normally supposed to be proportionate to the malpractice alleged which is also an important factor to be borne in mind, has been clearly overlooked. All in all, irrespective of the fact whether the petitioner had indulged in malpractice or otherwise, the decision to inflict punishment is not preceded by the procedure expected to be followed under the ordinance.

11. If such is the state-of-affairs, we find no reason but to remand the matter for a decision afresh if the respondent – university considers it appropriate. However, simultaneously, since time is running out inasmuch as the next semester examination is to commence on 15-12-2023, we would be required to balance the equities.

12. We, therefore, allow the writ petition partly.

13. The impugned order is quashed and set aside.

14. It would be open for the respondent – university to undertake a fresh exercise in respect of the alleged malpractice in accordance with law. However, in the meantime, the petitioner shall be permitted to appear at the examination for the fifth semester which is to start from 15-12-2023. However, his performance shall be subject to

the final outcome in the matter of the alleged malpractice and shall not be declared without the permission of this Court.

15. If at all the petitioner has to comply with the procedural aspects regarding submission of application for examination, payment of fees etc., the respondent university shall permit him to do so.

16. The petitioner shall not be entitled to claim any equities.

17. Rule is made absolute accordingly.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/