

State Of Maharashtra vs Prabhu on 3 November, 1993

Equivalent citations: 1994 SCC (2) 481, AIRONLINE 1993 SC 464

Author: R.M. Sahai

Bench: R.M. Sahai, N.P Singh, S.P Bharucha

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
PRABHU

DATE OF JUDGMENT 03/11/1993

BENCH:
SAHAI, R.M. (J)
BENCH:
SAHAI, R.M. (J)
SINGH N.P. (J)
BHARUCHA S.P. (J)

CITATION:
1994 SCC (2) 481

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by SAHAI, J.- The main question of law that arises for consideration in this appeal, directed against judgment and order of the Bombay High Court, is if the High Court correctly construed Section 15(2) of the Maharashtra State Board of Secondary and Higher Secondary Education Act, 1965 (hereinafter referred to as 'the Act'). And even if it be so then whether it was an eminently fit and proper case for exercise of discretion under Article 226 of the Constitution of India.

2. In April-May 1984 the examination for first year engineering students was held at Nilanga. The respondent, who was a lecturer in a polytechnic college, was appointed as a supervisor at the

examination centre. Later on complaints of mass copying were received. And the University of Marathwada, on recommendation of a Committee of experts, cancelled results of the candidates who appeared from that centre and debarred them, further, from appearing in examination for next two years. It also decided not to entrust any examination duty in future to the respondent. On August 22, 1984 the Director of Technical Education issued a circular debarring many lecturers, including the respondent, from being assigned any examination duty. Some of the students approached the High Court by way of Writ Petition Nos. 808 and 809 of 1984 against the order passed by the University. On December 7, 1984 their petition was partly allowed. The order cancelling the examination was upheld. But the order debarring them from appearing in future examination was quashed as the order was passed without affording any opportunity. The Director of Technical Education, on March 21, 1985, issued a letter withdrawing the earlier circular issued by it in view of the judgment in the writ petitions. In March 1986 the respondent was nominated as a member of the State Board of Maharashtra Secondary and Higher Secondary Education at its Aurangabad Divisional Board. It appears after his appointment the University informed the Government that the respondent was not a proper person to have been appointed as a member of the Board as it was during his supervisorship that mass copying had taken place in one of the centres and the results of the candidates who appeared from that centre were cancelled. On being apprised of it the Government issued a show-cause notice on October 22, 1986 to the respondent that he having been found to have failed in discharge of his duty as supervisor at the examination centre Nilanga, honestly and diligently, the Government was of the view that his continuance as member of the Board was not conducive to the proper functioning of the Board and, therefore, it proposed to remove him from the membership. This notice was replied by the respondent and it was claimed by him that the action had been taken against him on suspicion. It was stated that the decision of University having been set aside by the High Court and the Director of Education having withdrawn the circular nothing survived against him. The Government did not agree with the explanation and by order dated September 16, 1987 cancelled membership of the respondent. This order was challenged by way of writ petition. It was allowed and the order cancelling membership was quashed as ultra vires as a plain reading of Section 15(2) of the Act indicated that the Government could take action, only, if it was of opinion that the activities of the respondent were detrimental to or obstructing the proper functioning of the Board. The Bench held that since the show-cause notice issued by the Government did not show anything to this effect and it merely stated that respondent's activities were not conducive to the functioning of the Board the objectionable conduct of the respondent in April and May 1984 could not by any stretch of imagination amount to activities which were detrimental to or obstruct the proper functioning of the Board, therefore, the order removing the respondent from the Board was bad.

3. For proper appreciation of the view taken by the High Court Section 15(2) of the Act is extracted below :

"The State Government may suo motu by order remove any member of the State Board or a Divisional Board or any Council or Committee thereof, elected or nominated or designated, whose activities are, in the opinion of the State Government, detrimental to, or obstruct, the proper functioning of the State Board or of the Divisional Board or of any Council or Committee thereof :

Provided that, no member shall be removed from office unless he has been given a reasonable opportunity of showing cause why such order should not be made against him."

A bare perusal of the sub-section indicates that even though the power to remove a member of the Board exists in the State Government but it can be exercised only if the Government is of opinion that the activities of the member are detrimental or obstructing the functioning of the Board. The use of the word 'are' is capable of giving rise to the construction that the activities which could empower the Government to take action of removal of a member must arise out of his functioning as a member of the Board. It can legitimately be urged as was attempted by the learned counsel for the respondent that it is activities in praesenti which could give rise to an action under this sub-section and not what had happened in past. That is what appears to have persuaded the High Court to take the view in favour of respondent. But what was lost sight of was that an appointment of a member who does not carry an acceptable social image in the society is ipso facto bad. A teacher who is expected to instill discipline in students and prepare them for future found responsible for assisting or permitting copying in examination cannot be considered to be a proper person who could have been entrusted with such duties and responsibilities as are required to be discharged by the Board. Induction of the respondent who with his past records was undoubtedly ineligible, to be appointed as member, was detrimental to the Board. It is not necessary to deal with this aspect further as the order cannot be sustained for other reason.

4. Even assuming that construction placed by the High Court and vehemently defended by the learned counsel for respondent is correct should the High Court have interfered with the order of Government in exercise of its equity jurisdiction. The distinction between writs issued as a matter of right such as habeas corpus and those issued in exercise of discretion such as certiorari and mandamus are well known and explained in countless decisions given by this Court and English Courts. It is not necessary to recount them. The High Courts exercise control over Government functioning and ensure obedience of rules and law by enforcing proper, fair and just performance of duty. Where the Government or any authority passes an order which is contrary to rules or law it becomes amenable to correction by the courts in exercise of writ jurisdiction. But one of the principles inherent in it is that the exercise of power should be for the sake of justice. One of the yardstick for it is if the quashing of the order results in greater harm to the society then the court may restrain from exercising the power.

5. On this test the order of the High Court does not appear to be well founded. Even assuming there was technical breach and the show-cause notice did not spell out those relevant facts which could have empowered the Government to take action the social injury by nominating or appointing the respondent to an office of responsibility must not only have raised the eyebrows in the educational circle but is susceptible of creating unhealthy atmosphere. Reliance was placed on the letter issued by the Director of Education withdrawing his circular debarring the respondent from being entrusted with any examination work. It is not necessary to comment on it. But the letter obviously was issued without properly appreciating the effect of order passed by the High Court. Such hasty actions by superior officers are destructive of discipline Which is necessary to be maintained. In any case the Director might have acted under constraints for reasons more than one but the High Court

was not bound by it. It was in a better position to appreciate the effect of such order. Therefore, even if the order of the Government was vitiated either because it omitted to issue a proper show cause notice or it could not have proceeded against the respondent for his past activities the High Court should have refused to interfere in exercise of its equity jurisdiction as the facts of the case did not warrant interference. What could be more harmful to society than appointing the respondent as member of the Board, a position of importance and responsibility, who was found responsible for mass copying at the examination centre of which he was a supervisor. It shakes the confidence and faith of the society in the system and is prone to encouraging even the honest and sincere to deviate from their path. It is the responsibility of the High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for sake of justice and refusing to interfere where it is against the social interest and public good.

6. In the result, this appeal succeeds and is allowed. The order of the High Court quashing the order dated September 16, 1987 is set aside. The writ petition filed in the High Court by the respondent shall stand dismissed. But parties shall bear their own costs.