

CENTRAL BOARD OF SECONDARY EDUCATION

v.

MS. VINEETA MAHAJAN AND ANR.

OCTOBER 15, 1993

[KULDIP SINGH AND S.C. AGRAWAL, JJ.]

Central Board of Secondary Education Examination Bye-laws—Rule 36.1(iv)(a)—Use of unfair means at the examination—No distinction between malafide or bona-fide possession of material relevant to the examination—Recovery thereof—Effect of—Even though the incriminating material was not used candidate was guilty of using unfair means.

The Respondent was appearing for Class XII examination. In the examination hall she was found in possession of three small pieces of paper kept in her pencil box. The Result Committee of the Appellant-Board initiated proceedings against her for using unfair means at the examination. Before the Committee Respondent admitted having kept the said papers in the pencil box but stated that she did not use the same while answering the question paper. She also stated that since she arrived late for the examination, she was utterly confused and panicky and so she forgot to remove the papers before entering the hall. When questioned about the warning given in the examination hall as regards possession of undesirable material by the examinees, the respondent answered that she was too tense to hear the warning.

The Committee found the respondent guilty of using unfair means at the examination and as a punishment her examination for the year 1993 was cancelled. She challenged the said order by way of a writ petition before the High Court, which allowed the writ petition and quashed the punishment awarded to the respondent.

Against the High Court's order, the Board preferred the present appeal.

Allowing the appeal, this Court

HELD : 1.1. Rule 36.1(iv)(a) of the Examination Bye-laws framed by the Central Board of Secondary Education clearly defines "the use of

- A "unfair means at the examination" and lays down in simple language that a candidate having in possession, papers relevant to the examination in the paper concerned, shall be deemed to have used unfair means at the examination. The *sine qua non*, for the misconduct under the rule, is the recovery of the incriminating material from the possession of the candidate. Once the candidate is found to be in possession of papers relevant to the examination, the requirement of the Rule is satisfied and there is no escape from the conclusion that the candidate has used unfair means at the examination. The Rule does not make any distinction between *bona fide* or *mala fide* possession of the incriminating material. [390-E-G]

- C 1.2. In the instant case, may be because of strict vigilance in the examination hall the candidate was not in a position to take out the papers from the pencil box and use the same. The very fact that she took the papers relevant to the examination in the paper concerned and was found to be in possession of the same by the invigilator in the examination hall is sufficient to prove the charge of using unfair means by her in the examination under the Rule. [390-H, 391-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5450 of 1993.

- E From the Judgment and Order dated 23.8.1993 of the High Court of Delhi in Civil Writ Petition No. 3714/93.

P.P. Rao, Rajeev Sharma, T.C. Sharma, Ms. Rajni K. Prasad and Neelam Sharma for the Appellant.

- F G. Ramaswamy, S.K. Mehta and K.L. Mehta for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. Special leave granted.

- G Vineeta Mahajan, respondent in this appeal, appeared in Class XII examination conducted by the Central Board of Secondary Education, Delhi, in the month of March, 1993. She sat for the Political Science paper on March 16, 1993 in the said examination. During the course of examination, the invigilator found the respondent in possession of written-material in the shape of three small pieces of paper kept in the pencil box. The matter was reported to the Central Superintendent. Proceedings in respect

of the charge "for using unfair means at the examination" were initiated by the Result Committee of the Board. The respondent was examined by the said Committee on July 19, 1993. She admitted having kept the said papers in the pencil box but she stated that she had not used the same while answering the question paper. According to her she arrived at the examination hall late - due to car puncture on the way - and, as such, was utterly confused and panicky and in that mental state she forgot to takeout the papers from the pencil-box before entering the examination hall. The Deputy Superintendent of the Examination Centre stated before the Committee that she had given the usual warning in the examination hall about the possession of undesirable material by the examinees. When questioned by the Deputy Superientendent the respondent answered that she was too tense to hear the warning. The Committee found the respondent guilty of using unfair means at the Examination and as a punishment her examination for the year 1993 was cancelled. She challenged the said order by way of a writ petition before the Delhi High Court. The High Court allowed the writ petition and quashed the punishment awarded to the repondent. This appeal by way of special leave is against the judgment of the High Court.

Rule 36.1(iv)(a) of the Rules (the rules) for unfair means cases framed by the Board which is relevant for our purposes is reproduced hereunder:—

"36.1(iv)(a) If during the course of examination, any candidate is found indulging in any of the following, he shall be deemed to have used unfair means at the examination:

(a) having in possession, papers, books, notes or any other material or information relevant to the examination in the paper concerned."

The High Court allowed the writ petition on the following reasoning:—

"The question which arises for our consideration is, if the positive finding of the result committee is that the petitioner had not copied then can the provisions for Rule 36.1(iv) be so invoked so as to come to the conclusion that the petitioner had been guilty of using unfair means.

- A It is no doubt true that the said provisions raise presumption that the candidate is guilty of using unfair means if, *inter-alia*, written material is found on the person in the examination. But this is a rebuttable presumption and it can be seen whether in fact the material was not used..... We find here in this case that the
- B result committee, having come to a positive finding that the petitioner had not copied despite having written material on her person, ought not to have imposed any penalty. Having come to the conclusion, on facts, that the petitioner had not copied, the question of imposing a penalty merely on the presumption of some written notes being found with the candidate, could not be
- C arrived at, on the facts and circumstances of the present case. The decision of the respondents of cancelling the result for the year 1993 did not flow, in other words, from the finding of fact which that authority itself had arrived at. This court is merely correcting the error which has crept in the impugned order. For the aforesaid
- D reasons, this writ petition is allowed. The decision of the respondents in cancelling the examination of the petitioner for the year 1993 is quashed and the respondents are directed to declare the result of the petitioner within two weeks from today."

- E We do not agree with the reasoning of the High Court. The High Court fell into patent error in reading a rebuttable presumption in the language of the rule. The Rule clearly defines "the use of unfair means at the examination" and lays down in simple language that a candidate having in possession, papers relevant to the examination in the paper concerned, shall be deemed to have used unfair means at the examination. The
- F *sine qua non*, for the misconduct under the rule, is the recovery of the incriminating material from the possession of the candidate. Once the candidate is found to be in possession of papers relevant to the examination, the requirement of the Rule is satisfied and there is no escape from the conclusion that the candidate has used unfair means at the examination.
- G The Rule does not make any distinction between *bona fide* or *mala fide* possession of the incriminating material. The High Court reasoning, that the candidate having not used the material - in spite of the opportunity available to her - the possession alone would not attract the provisions of the Rule, in our view, is not borne out from the plain language of the Rule. May be, because of strict vigilance in the examination hall the candidate
- H was not in a position to take out the papers from the pencil box and use

the same. The very fact that she took the papers relevant to the examination in the paper concerned and was found to be in possession of the same by the invigilator in the examination hall is sufficient to prove the charge of using unfair means by her in the examination under the Rule. A

We allow the appeal, set aside the judgment of the High Court dated August 23, 1993 and dismiss the writ petition filed by the respondent, Vineeta Mahajan before the High Court. No costs. B

G.N.

Appeal allowed.