Maharashtra State Board of Secondary and Higher Secondary Education

Vs

K. S. Gandhi and Others

Civil Appeal Nos. 491 to 544 of 1991

(K. Ramaswamy, N. M. Kasliwal JJ)

12.03.1991

JUDGMENT

K. RAMASWAMY J. –

1. We heave heard the learned counsel on the either side and grant special leave to appeal in all the cases.

2. The quest for just result to save the precious academic years to the students while maintaining unsullied the examination process is the core problem which the facts have presented for solution.

3. The appeals arise from the common judgment of a Division Bench of the Bombay High Court in Writ petition No. 2646 of 1990 and batch. The appellant for short 'the Board' conducted secondary examinations in the month of March 1990, whereat the marks award, after the formalities of valuation by the examiners of the answer sheets in each subject; the random counter-check by the moderators and further recounting at the Board, moderators' mark sheets sent to Pune for feeding the computer to declare the results were found tempered with. Thereon, admittedly, it was found that moderators' mark sheets relating to 283 examinees which include 53 respondents in these appeals were tampered, in many a case in more than 2 to 8 subjects, and in few cases in one subject. As a result, 214 examinees who were otherwise to fail would pass and the remaining 69 examinees have improved their ranking, which would be in some cases exceptionally good. The declaration of their results were withheld pending further enquiry and the rest were declared on June 30, 1993. Several writ petitions were file in the High Court against non-declaration of the results and the High Court directed to take expeditious action to declare the results of the examination within the specified time. The Board appointed seven enquiry officers to conduct the enquiry. Show cause notices were issued to the students on July 30, 1990 informing them of the nature of tampering, the subjects in which the marks were found tampered with the marks initially obtained and the marks increased due to tempering, and also indicated the proposed punishment if in the enquiry it would be found that marks were tampered with the knowledge or connivance or at the instance of the candidates or parents or guardians. They were also informed that they would be at liberty to inspect the documents at the Divisional Board at Bombay. They were entitled to adduce documentary and oral evidence at the hearing. They will also be permitted to cross-examine the witnesses of the Board, if any. They would not be entitled to appear through an advocate, but the parents or guardians would be permitted to accompany the students at the time of enquiry, but they are not entitled to take part in the enquiry. The candidates submitted their explanations denying the tampering and appeared before the Enquiry Officers on August 8, 9, 10, 20, 21 and 22, 1990. At the enquiry, each student inspected the record. A questionnaire was given to be filled in writing. Every candidate was shown his answer book, marks awarded in the subject/subjects and the tampered

marks in the moderators' marks sheets. All the candidates admitted that the marks initially awarded by the examiner were tampered in the moderators mark sheets; due to tampering the marks were increased and the increase was to their advantage. However, they denied that either they or their parents or guardians were privy to the tampering. The Enquiry Officers submitted their reports holding that the moderators' mark sheets have been fabricated and submitted the reports to the Board. The Standing Committee constituted in this regard considered the records and the reports on August 29, 1990 discussed pros and cons and expressed certain doubts about possibility of the candidates/parents/guardians committing fabrication. They sought for and obtained legal opinion in that regard. On August 30, 1990 the Standing Committee resolved to withhold, as a measure of punishment, the declaration of the results of their examinations and to debar the 283 students to appear in the supplementary examination to be held in October 1990 and March 1991. The notification was published on August 31, 1990 and the report submitted to the High Court. Thereafter the High Court considered the cases on merits. The learned Judges by separate but concurrent judgments allowed the writ petitions.

4. Sugla, J. held that the Standing Committee of the Divisional Board under the Maharashtra Secondary and Higher Secondary Educational Board Act of 1965 (Mah. Act 41 of 1965) for short 'the Act' was devoid of power. It did not obtain the approval of the Divisional Board, and therefore, the impugned notification was without authority of law. On merits also it was held that Standing Committee did not apply its mind in the proper perspective to the material facts. Therefore, the finding that tampering was done at instance of the examines/parents/guardians is perverse. Bharucha, J. without going into the jurisdictional issue agreed with Sugla, J. and held that the preponderance of the probabilities would show that the examinees were not guilty of the malpractices. The guilt has not been established. The examinees might well be innocent. Accordingly, the impugned notification dated August 31, 1990 was quashed. Mandatory injunction was issued to the Board to declare the results of 283 examines within two weeks from the date of the judgment and marks were directed to be communicated to the examinees within a period of two weeks thereafter.

5. The admitted facts are that the marks sheets of the examiners were not tampered. Only the moderators' marks sheets were tampered with. As per the procedure, after the marks were scrutinised at the State Board and found the marks tallied and to be correct, the moderators' marks sheet were sent to the computer at Pune, obviously in sealed packets, for feeding the results. After the date of recounting the marks in the office of the State Board at Bombay and before the date of taking them to feed the computer, moderators' marks sheets were tampered with. The individual students were put on notice of the marks they originally obtained and the tampered marks in the subject/subjects concerned. They were also given the opportunity to lead evidence on their behalf and if the witnesses were examined on behalf of the Board they would be permitted to cross-examine them. They inspected the records. The questionnaire given to all the examinees at the enquiry were before us at the hearing including the 53 respondents in the appeals. We have perused the questionnaire. It is clear from the answers given to the questionnaire that all the examinees admitted the marks they originally got and the tampered marks on the moderators' marks sheets. They also admitted that tampering was to their advantage. Everyone denied the complicity of either of candidates or the parents or the guardians. Thus it is clear that at the enquiry there is no dispute that the moderators' marks sheets were tampered, though the candidates, obviously and quite expectedly, denied their complicity in that regard. Due to tampering 214 would have been passed and 69 accelerated their ranking and percentage to seek admission into prestigious institutions. The racket of large scale tampering (sic after) wading through 80,000 moderators' marks sheets obviously was done by concerted action. It is clear that from large body of moderators' mark sheets,

it is not possible to pick the mark sheets of the concerned examinee alone unless there is concerted and deliberate efforts, in conspiracy with some members of the staff entrusted with the duties in this regard, for illegal gratification. It is also not an innocent act of mere corrections as is sought to be made out by Sri Chidambaram, the learned counsel for the respondents. We have no manner of doubt that unfair means were used at the final Secondary Examination held in March 1990, by fabricating the moderators' marks sheets of 283 examinees, in a concerted manner, admittedly, to benefit the students concerned.

6. The first questions, therefore, is whether the Standing Committee of the concerned Divisional Board has power under the Act and Regulations to enquire into the use of unfair means committed at the final examination conducted under the Act. Section 4 of the Act declares that the State Board of Secondary and Higher Secondary Education is a body corporate. Section 18 enumerates the powers and duties of the State Board. Clause (t) of Section 18 empowers the Board to make regulations for the purpose of carrying into effect the provisions of the Act. Clause (g) empowers the Board to give to the candidates certificates after passing final examination. Clause (m) empowers to recommend measures and to prescribe conditions of discipline. Clause (w) gives residuary power to do all such acts and things as may be necessary to carry out the purposes of the Act. Section 19 gives powers and entrusts duties to the Divisional Board of each division. Clause (f) postulates, "to conduct in the area of its jurisdiction the final examination on behalf of the State Board". Clause (l) provides, "to deal with cases of the use of unfair means according to the procedure laid down by the State Board". Section 23 provides the power of appointments of the Committees by the State Board. Sub-section (2) thereof provides that :

> "23. (2) The State Board may appoint such other Committees as it thinks necessary for the efficient performance of its functions."

Equally sub-section (3) of Section 23 empowers thus :

> "23. (3) Each Divisional Board shall appoint Committees designated as follows :
>
> (d) Examination Committee."

Sub-section (5) states thus :

> "23. (5) The constitution of every Committee appointed by the State Board or a Divisional Board, the term of office of its members and the duties and functions to be discharged by it shall be such as may be prescribed."

Section 36 empowers the State Board to make regulations for purpose of carrying into effect the provisions of the Act. Sub-section (2) thereof states that :

> "36. (2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :
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> (a) the constitution, powers and duties of the Committees, appointed under Section 23;
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> # * * *##
>
> (f) the arrangements for the conduct of final examinations by the Divisional Boards

and publications of results;

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(n) any other matter which is to be or may be prescribed under this Act."

Sub-Section (3) provides :

"36. (3) No regulation made under this section shall have effect until the same has been sanctioned by the State Government."

Thus it is clear that the State Board is empowered to constitute the Divisional Boards and the Standing Committees. The State Board is also empowered to make regulations to conduct examinations and also to deal with the use of unfair means at the final examination conducted by the Board. The Divisional Board is empowered to conduct within its area the final examinations on behalf of the State Board. The Divisional Board is also empowered to deal with the cases of unfair means according to the procedure laid down by the State Board.

7. The State Board made regulations named as Maharashtra Secondary and Higher Secondary Educations Board Regulations, 1977 which came into force with effect from July 11, 1977. Regulation 9(2) (xviii) reads thus :

"to lay down the procedure and specify the penalties to be followed by the Divisional Boards, in dealing with cases of use unfair means by persons seeking admission to or appearing at the examinations conducted under the authority of the State Board."

Under Regulation 14 the Standing Committee of the Divisional Board was to be constituted under sub-regulation (1) thereto. Sub-regulation (2) provides :

"14. (2) Subject to the provisions of the Act and the Regulations, the Standing Committee shall have the following duties and functions namely -

* * *##

(x) to deal with cases of use of unfair means by persons seeking admission to or appearing at the final examinations, according to the procedure laid down by the State Board."

8. By a resolution passed at the meeting of the State Board held on October 26, 1985, Ex.'Z ' provides the procedure for enquiry. Clause 3(f) defines 'misconduct' as follows :

"3. (f) 'Misconduct' shall mean any illegal or wrongful act or conduct which is alleged to have been resorted to by any candidate and/or any member of the staff, at, for or in respect of the final examination and, without prejudice to the generality of the foregoing, shall include... tampering with the documents issued by the Board or otherwise howsoever changing a candidate's results in any manner whatsoever and generally acting in such a manner so as to affect or impede the conduct of the final examinations and fair declaration of results thereof."

Clause (4) empowers to conduct an enquiry either suo moto or on a complaint about

any misconduct and the procedure in that regard so that the Chairman of the Divisional Board may entrust the enquiry into the alleged miscount to any member or members of the Divisional Board other than the members of Standing Committee. Clause (5) empowers to entrust the enquiry. The Enquiry Officer shall give a notice in writing to the candidate ... setting forth the nature of the misconduct alleged against the candidate and call upon the candidate to show cause within the time specified therein. It also empowers to set out the punishment proposed to be imposed on a candidate. Clause (5)(b) gives an opportunity to the candidates to inspect the relevant documents proposed to be relied upon at the enquiry. Clause (6) gives opportunity to the delinquent to submit an explanation; to produce his witnesses as well as documentary evidence and to be heard in person, if he/she so desires, but shall not be entitled to be represented by an advocate or any other persons. The delinquent shall be bound to answer truthfully to all questions relevant the subject of enquiry that may be put him/her by the Enquiry Officer. Clause (10) provides that the concerned Enquiry Officer shall submit the report in writing including the findings and the proposed punishment. Clause 11 provides thus :

"(11) The Standing Committee shall consider the report and decide the case as it may deem fit. The Standing Committee will take the decision in the same meeting."

Clause (12) states thus :

"The Standing Committee shall not be bound to give detailed reasons in support of its order or decision but shall record its reasons if it disagrees with findings of recommendations of the Enquiry Officer and under such circumstances the Standing Committee need not give hearing to the delinquent concerned."

Other clauses are not relevant for the purpose of this case. Hence omitted. The Board also in its meeting held on October 26, 1985 framed rules in Appendix 'A' providing under different heads the nature of the offence and the quantum of punishment, the relevant Item 16 reads thus :

"Tampering with the Secondary/Higher Secondary School Certificate and/or statement of marks or their copies and any other documents issued by the Board.

Cancellation of performance of the examination and debarring the candidate for five more examinations and/or to lodge complaint by the concerned institution/authority to Police Department."

Thus a conspectus of these relevant provisions of the Act, regulations and resolutions clearly cover the entire field of operation regarding the use of unfair means at the final examination, specify the competent authorities and the procedure to deal with the same. The Divisional Board undoubtedly has been empowered under Section 19 of the Act to deal with the use of unfair means as the final examination. It may be made clear at this juncture that the Standing Committee consists of six members of the Divisional Board and none of them associated with the enquiry. Enquiry Officers are also the members of the Divisional Board. The regulations provide the procedure in this regard. It is undoubtedly true as contended by Shri Chidambaram, that the Act empowers the Divisional Board to deal with the use of unfair means at the final examination. But to give acceptance to the contention that the Standing Committee is an alien body to the Divisional Board is to do violence to the scheme of the Act and Regulations. It is seen that under the scheme of the Act and Regulations

the State Board is empowered to constitute the Standing Committee. Equally the Divisional Board is empowered to constitute the committees which include the Examination Committee. The members thereof are only members of the Divisional Board. Equally the Enquiry Officers are also the members of the Divisional Board, other than the members of the Education Standing Committee. The Standing Committee is an executive arm of the Divisional Board for the efficient and expeditious functioning of the Board as adumbrated under the Act itself. It is not a foreign body. Therefore, when the Division Board is conducting the examinations and dealing with use of unfair means at the final examination, it is acting on behalf of the State Board as its agent. When the enquiry was conducted by some members and the Standing Committee was taking the decision thereon, it is acting on behalf of the Divisional Board. There is no dichotomy but distribution of the functions. Therefore, when the Education Standing Committee takes the decision its decision is on behalf of the Divisional Board to which they are members and the decision of the Divisional Board in turn is on behalf of the State Board. This is the integral scheme woven by the Act and Regulations. Thus under the scheme of the Act, for the efficient and expeditious functioning of the concerned Boards, implementation of the provisions of the Act, and to prevent use of unfair means at the final examination including tampering with the result of the examination, the Standing Committee is clearly within its power to take final decision. On a fair and harmonious reading of the relevant provisions and given their due scope and operational efficiency, we are of the considered view that the Education Standing Committee of the Divisional Board, itself a statutory body, acted on behalf of the Divisional Board and is not a delegate of the Divisional Board.

9. In State of U.P. v. Batuk Deo Pati Tripathi ((1978) 2 SCC 102 : 1978 SCC (L&S) 147) the respondent was appointed as a Munsif in the State Judicial Service and was later promoted as a District Judge. The Administrative Committee of the High Court reviewed the service and the Committee recommended to the State Government and communicated to all the Judges of recommendation to compulsorily retire the respondent from service. The government accordingly retired the respondent compulsorily which was challenged in a writ petition. A Full Bench of the Allahabad High Court held that District Judge cannot be retired from service on the opinion formed by the Administrative Committee and all the Judges should have considered and made recommendation. Accordingly, the order was set aside. On appeal, the Constitution Bench of this Court held that Article 235 of the Constitution provides control over the District Judges and the court subordinate thereto shall be vested in the High Court. It is open to the High Court to make rules to exercise the power of control feasible, convent and effective. Accordingly the High Court regulated the manner of appointment of a Committee to screen the serve record. Thus, the rules framed prescribed the manner in which the power has to be exercised. Truly, it is regulatory in character and the powers were exercised by the Committee and recommended to the State Government to compulsorily retire the respondent and it amounts to taking a decision on behalf of the High Court. In Khargram Panchayat Samiti v. State of W. B. ((1987) 3 SCC 82, 84) the facts were that the Panchayat Samiti passed resolution on April 12, 1985 specifying that the cattle fairs run by the two rival organisations would be held on specified different dates which were impugned in the writ petition contending that the Samiti was devoid of the power and jurisdiction to pass such a resolution. The High Court held that the Samiti was vested with power to grant licence to hold the fair under Section 117 of West Bengal Panchayat Act, 1973. In the absence of any rules framed in that regard it had no power to specify dates on which such hat or fair shall be held. While reversing the High Court's judgment, this Court held that the general administration of the local area vested in the Samiti which had power to grant licences to hold a fair or hat under Section 117 of the Act. Necessarily it carries with it the power to supervise, control and manage such a hat or fair within its territorial jurisdiction. The conferment of the power to grant a licence for holding of a hat or a fair

includes the power to make incidental or consequential order for specification of a date on which such a hat and fair shall be held. Accordingly, the resolution of the Samiti was upheld. In Baradakanta Mishra v. Orissa High Court ((1976) 3 SCC 327 : 1976 SCC (L&S) 429 : 1976 Supp SCR 56), relied on by Sri Chidambaram, the facts were that the appellant while acting as District Judge, an enquiry into certain charges was held against him, and was he reduced to Additional District Magistrate (Judicial). He refused to join the duty. Fresh proceedings were initiated against him and after enquiry the High Court dismissed him on the ground that he was convinced on a charged of a criminal contempt. An appeal was filed to the Governor and writ petition file there after in the High Court was dismissed. While allowing the appeal filed under Article 136, the scope of the words 'control' and 'deal' used in Article 235 were interpreted at SCR page 576 F and G (SCC p. 331) and held that the word 'control' includes something in addition to the disciplinary jurisdiction. The control is with regard to conduct and discipline of the District Judges and subordinate courts and includes right to appeal against the order of the High Court in accordance with the condition of service (sic (See p. 333, para 20)) includes an order passed thereon. The word 'deal' also includes the control over disciplinary and not mere administrative jurisdiction. The control which is vested in the High Court is complete control subject only to the power of the Governor in the matter of appointment including initial posting and promotion of the District Judge and dismissal, removal and reduction in rank of District Judges within the exercise of the control vested in the High Court. The High Court can hold enquires impose punishments other than dismissal or removal subject, however, to be conditions of service to a right of appeal, if granted by the conditions of service, and to the giving of an opportunity of showing cause as required by clause (2) of Article 311 unless such an opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. The High Court alone could make enquiries into disciplinary conduct. It was held that the High Court had no jurisdiction to dismiss the District Judge. Accordingly it was quashed. That ratio has no application to the facts in this case since the Act, Regulations and the Resolutions empowered the Divisional Board and its Standing Committee to deal with use of unfair means at final examinations including fabrication of documents issued by the Board as an integral part of the power of the Divisional Board. Similarly, the ration Tej Pal Singh v. State of U.P. ((1986) 3 SCC 604 : 1986 SCC (L&S) 688 : (1986) 3 SCR 428) also is inapplicable to the facts of this case. In that case, the facts were that while the appellant was working as the District and Sessions Judge, the State Government moved the High Court for his premature retirement. The Administrative Judge agreed with government's proposal to retire the appellant after giving him three months' notice. The Governor passed impugned order compulsorily retiring the appellant. Three days thereafter the Administrative Committee approved the opinion of the Administrative Judge which was transmitted to the government. Assailing the action of the government the writ petition was filed which was dismissed by the High Court, but on appeal this Court held that the Administrative Judge was not competent to recommend to the Governor to compulsorily retire the District and Sessions Judge and the order of the government made pursuant thereto was declared illegal. This Court reiterated that the High Court has power under Article 235 to make rules for its administrative convenience, but since the impugned action was not in pursuance of that rule, the action was not upheld. That ratio also renders little assistance to the respondents for the reasons that the Standing Committee, as stated earlier is an integral part of the Divisional Board and its acts are for and on behalf of the Divisional Board. Accordingly the Board must be deemed to have passed the impugned notification as per the scheme of the provisions of the Act and Regulations. Therefore, the finding of the learned Judge Sugla, J. that the Standing Committee had no power to take the impugned decision, etc. without approval of the Divisional Board is clearly illegal and cannot be sustained.

10. The question then is whether the candidates or their parents or guardians are privy to the fraudulent fabrication. Since we are informed that investigation in this regard by the police is in progress, we refrain to express any final opinion in this regard. Suffice to state that the records clearly establish that there was a fraudulent fabrication of the moderators' marks sheets of 283 candidates including the respondents herein. The question, therefore, emerges whether the conclusion reached by the Standing Committee that the fabrication was done at the behest of either the candidate or the parents or the guardians to their advantage is based on records. We remind ourselves that while exercising the powers, under Article 226 or Article 136 of the Constitution, by the High Court or of this Court we are not sitting as a court of appeal on the findings of facts recorded by the Standing Committee (domestic enquiry body), nor have power to evaluate the evidence as an appellate court and to come to its own conclusions. If the conclusions reached by the Board can be fairly supported by the evidence on record then the High Court or this Court has to uphold the decision, though as appellate court of facts, may be inclined to take a different view.

11. The contention of Messrs Chidambaram, Jaitley, Salve and Cama, the learned counsel for the students, is that the students were minors; neither the parents nor anybody like an advocate was permitted to assist the students. Answers to the questionnaire were extracted from the students to confess their guilt. No adequate opportunity was given to the students at the enquiry. No one on behalf of the Board acquainted with the facts was examined to explain as the how the moderators' mark sheets were dealt with after the Board screened the marks, but before taking to Pune to feed the computer, nor an opportunity was given to cross-examine them. The evidence without subjecting it to cross-examination is of no value. Enquiry is not a report in the eye of law. It does not contain any statement of facts, nor reasons recorded. It merely records conclusions. When seven members were appointed it is not expected that all of them would submit uniform stereotyped reports to the Standing Committee. The Standing Committee did not apply its mind to the facts, nor recorded reasons in support of its conclusion that the examinees/parents/guardians were parties to the fabrication and the fabrication was done at their behest. Sri Chidambaram further contended that the Board should establish the guilt of the examinees beyond all reasonable doubt. Sri Jaitley, Sri Cama and Sri Salve though did not support Sri Chidambaram that the standard of proof must be beyond all reasonable doubt, they argued that standard of proof must be of a high degree akin to trial in a criminal case. The Board did not discharge its duty, on the other hand the Board had presumed that fabrication was done for the benefit of the examinees. The test of benefit to an examinee is preposterous. There is no presumption that the fabrication was done at the behest of either the examinees/parents/guardians. It must be established by the Board as of fact that examinees/parents/guardians. It must established by the Board as of fact that the examinees/parents/guardians were responsible for fabricating the moderators' marks sheets. Thus no evidence was place on record, nor was it proved; that, therefore, the findings of the Standing Committee are clearly based on no evidence. The learned Judges of High Court were justified in reaching the conclusion that the Board had not established that the fabrication was done at the behest of the examinees/parents/guardians. This was resisted by Sri T. R. Andhyarujana, learned counsel appearing for the Board. It was his contention that all the examinees admitted in answers to the questionnaire that tampering was done and it was to their advantage. In view or the admission, the need to examine any person from the concerned section was obviated. Fabrication cannot be done except to benefit the examinees. The fabricator had done it for reward in concert with outside agencies. Therefore, the inference from these facts drawn by the Standing Committee that the examinees/parents/guardians were responsible to fabricate the moderators' mark sheets is based on evidence. Proper enquiry was conducted giving reasonable opportunity to the candidates. Show cause notices set out the material facts on which the Board intends to place reliance. The examinees

submitted their explanations and also answered the questionnaire. On consideration thereof the Standing Committee had reached the conclusion of the guilt of the examinees/parents/guardians. This is based on record. It is not open to the High Court to evaluate the evidence to come to its own conclusions. Thereby the High Court has committed manifest error of law warranting interference by this Court.

12. Article 51-A of the Constitution enjoins every citizen, as a fundamental duty, to promote harmony and spirit of common brotherhood among the people, to develop scientific temper, humanism and the spirit of inquiry and reform; to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. Article 29(2) declares education as fundamental right. The native endowments of men are by no means equal. Education means a process which provides for intellectual, moral and physical development of a child for good character formation; mobility to social status; an opportunity to scale equality and a powerful instrument to bring about social change including necessary awakening among the people. According to Bharat Ratna Dr. Ambedkar education is the means to promote intellectual, moral and social democracy. In D. M. K. Public School v. Regional Joint Director of School Education, Hyderabad (AIR 1986 AP 204 : (1986) 2 Andh LT 124 : (1986) 2 APLJ (HC) 47), one of us (K. Ramaswamy, J.) held that education lays foundation of good citizenship and is a principal instrument to awaken the child to intellectual and cultural pursuits and values in preparing the child for later professional training and help to adjust to the environment.

13. In nation building activities, education is a powerful lever to uplift the poor. Education should, therefore, be co-related to the social, political or economic needs of our developing nation fostering secular values breaking the barriers of casteism, linguism, religious bigotry and it should act as an instrument of social change. Education system should be so devised as to meet these realities of life. Education nourishes intellectual advancement to develop dignity of person without which there is neither intellectual excellence nor pursuit of happiness. Education thus kindles its flames for pursuit of excellence, enables and ennobles the young mind to sharpen his/her intellect more with reasoning than blind faith to reach intellectual heights and inculcate in him or her to strive for social equality and dignity of person.

14. Teacher occupies pride of place next below the parents as he/she imparts education and disciplines the students. On receiving salary from public exchequer he/she owes social responsibility and accountability to discipline the students by total dedication and sincere teaching. It would appear that their fallen standards and rectitude is also a contributory factor to the indiscipline among the students. The students, too, instead of devoting his or her precious time to character building and to pursue courses of study studiously and diligently in the pursuit of knowledge and excellence, dissipate their precious time and many indulge in mass copying at the final examinations or use unfair means. Some even do not hesitate to threaten the dutiful invigilators with dire consequences.

15. In G. B. S. Omkar v. Shri Venkateshwara University (AIR 1981 AP 163), P. A. Choudhary J. in the context of finding the student guilty of malpractices held, that : (AIR p. 165, para 2)

> "I regretfully note that standards of discipline and education presently obtaining in many Universities in our country leave a good lot to be desired. They are low and falling lower everyday. The fall-out of these low standards of University education on liberal professions is proving to be nearly catastrophic ... It is no wonder that some of our Universities have ceased to be centres of learning and have grown into battlefields for warring caste groups."

It was held that what the writ court Article 226 needs to consider is whether fair opportunity had been given to a petitioner and he had been treated squarely and whether the student had a fair deal with the University. Once the procedural formalities are complied with, in the absence of any allegation of mala fide, it must be presumed that the University had acted bona fide and honestly so long as there is evidence justifying the inference arrived at without the being a serious procedural irregularity. The writ court would not interfere with an order of educational institution. Therefore, what the writ court needs to do is to find whether fair and reasonable opportunity has been given to the students in the given facts.

16. From this background the question emerges whether the impugned notification is vitiated by any procedural irregularity under the provisions of the Act, Regulations and Resolutions referred hereinbefore or is violative of the principles of natural justice.

17. The students involved at the examination of secondary education are by and large minors but that by itself would not be factor to hold that students were unfairly treated at an inquiry conducted during the domestic inquiry. Assistance of an advocate to the delinquent at a domestic enquiry is not a part of the principles of natural justice. It depends on the nature of the inquiry and the peculiar circumstances and facts of particular case. The regulations and the rules of enquiry specifically excluded the assistance of an advocate at the inquiry. Therefore, the omission to provide the assistance of a counsel at the inquiry is not violative of the principles of natural justice. The show cause notice furnished wealth of material particulars on which the tampering was alleged to be founded and gave the opportunity to each student to submit the explanation and also to adduce evidence, oral or documentary at the inquiry. Each student submitted the explanation denying the allegation. At the inquiry the questionnaire in the pro forma was given to each student. It is undoubted that the allegation of fabrication was stated to have been done at the behest of either the student/parents or guardians and the parents or guardians were not permitted to participate in the inquiry. Inspection of documents was given. Their answer sheets and marks secured were perused by the students and were asked to testify whether the answer books belongs to him or her and to identify the marks awarded by the examiner to each answer to the question and the total marks awarded. It was also asked to verify and state whether the moderator's marks sheets were tampered with the concerned subject or subjects as the case may be. The student could easily identify and in fact identified his or her answer books and verified the marks awarded and answered positively that the marks were fabricated in the moderators' mark sheets. The questionnaire was also given to indicate their educational background in the previous school years and also the marks they expected at the final examinations. The need of the assistance of the parents/guardian was thus absolutely nil. Further question in the pro forma was to ascertain from the students, due to tampering, whether or not the marks were increased to his or her advantage. It could be answered by a mere look at the marks. No outside assistance is needed. All the students have admitted that the answer books belong to them. They also admitted the marks initially awarded by the examiner or added or subtracted, if any, by moderators. They also admitted that the fabrication in the moderators' marks sheets in the subject or subjects and the marks were increased to their advantage. They also denied their complicity or of parents or guardians. It is not the case of the respondents that they were coerced to answer the questions in a particular manner. It is obvious from the record that they had prior consultations with their counsel. Thus it could be seen that the procedure adopted at the inquiry is fair and just and just and it is not vitiated by any procedural irregularity nor is violative of the principles of natural justice. The absence of opportunity to the parents or guardians, in this background does not vitiate the legality or validity of the inquiry conducted or decision of the Committee.

18. It is true, as contended by Sri Chidambaram and reiterated by other counsel, that the Enquiry Report does contain only conclusions bereft of the statement of facts and reasons in support thereof. As pointed out by Sri Cama that in some of the reports, the body was written in the handwriting of one or other person and it was signed by the Enquiry Officer concerned. But when an inquiry against 283 students was conducted, it is not expected that each Enquiry Officer alone should write the report under his/her hand. In the circumstances the Enquiry Officer obviously had the assistance of the staff in the office to write the body or the conclusions to his/her dictation and he/she signed the report. The reports cannot be jettisoned on the ground that the Enquiry Officer mechanically drew the conclusions in the reports without applying his/her mind to the facts. The Enquiry Reports are not, therefore, bad in law.

19. In Union of India v. Mohan Lal Capoor ((1973) 2 SCC 836 : 1974 SCC (L&S) 5), this court speaking through M. H. Beg, J., for a bench of two Judges held in paragraph 28 at pages 854 that reasons are the links between the material on which certain conclusions are based to the actual conclusions. They disclose how mind is applied to the subject matter for a decision, whether it is purely administrative or quasi-judicial. They would reveal nexus between the facts considered and the conclusions reached. This view was reiterated in Gurdial Singh Fijji v. State of Punjab ((1979) 2 SCC 368 : 1979 SCC (L&S) 197). In these two cases relied on by Sri Chidambaram, the rules/regulations required recording of reasons in support of the conclusion as mandatory.

20. Unless the rule expressly or by necessary implications excludes recording of reasons, it is implicit that the principles of natural justice or fair play does require recording of reasons as a part of fair procedure. In an administrative decision, its order/decision itself may not contain reasons. It may not be the requirement of the rules, but at the least, the record should disclose reasons. It may not be like a judgment. But the reasons may be precise. In S. N. Mukherjee v. Union of India ((1990) 4 SCC 594 : 1991 SCC (L&S) 242 : 1990 SCC (Cri) 669 : JT (1990) 3 SC 630), the Constitution Bench of this Court surveyed the entire case law in this regard, and we need not burden the Judgment to reiterate them once over and at page 614, para 40 it held that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision. In para 36 on pp. 612-13 it was further held that recording of reasons... excludes chances of arbitrariness and ensures a degree of fairness in the process of decision making. The said principle would apply equally to all decisions and its applications cannot be confined to decisions which are subject to appeal, revision or judicial review."It is not required that the reasons should be as elaborate as in the decision of a court of law. " The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons. If the appellate or revisional authority disagree, the reasons must be contained in the order under challenge.

21. Thus it is settled law that the reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. It also excludes the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. The order when it affects the right of a citizen or a person, irrespective of the fact, whether it is quasi-judicial or administrative fair play requires recording of germane and relevant precise reasons. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aids the

appellate or revisional authority or the supervisory jurisdiction of the High Court under Article 226 or the appellate jurisdiction of this High Court under Article 136 to see whether the authority concerned acted fairly and justify to mete out justice to the aggrieved person.

22. From this perspective, the question is whether omission to record reasons vitiates the impugned order or is in violation of the principles of natural justice. The omnipresence and omniscience (sic) of the principle of natural justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a strait-jacket formula as an abstract proposition of law. It depends on the facts of the case, nature of the inquiry and the effect of the order/decision on the rights of the person and attendant circumstances. It is seen from the record and is not disputed, that all the students admitted the factum of fabrication and it was to his or her advantage and that the subject/subjects in which fabrication was committed belong to him or her. In view of these admissions the Enquiry Officer obviously did not find it expedient to reiterate all the admissions made. If the facts are disputed, necessarily the authority or the Enquiry Officer, on consideration of the material on record, should record reasons in support of the conclusion reached. Since the facts are admitted, the need for their reiteration was obviated and so only conclusions have been stated in the reports. The omission to record reasons in the present case is neither illegal, nor is violative of the principles of natural justice. Whether the conclusions are proved or not is yet another question and would need detailed consideration.

23. In Khardah Co. Ltd. v. Workmen ((1964) 3 SCR 506, 514 : AIR 1964 SC 719 : (1963) 2 LLJ 452) the ratio that the Enquiry Report must contain reasons in support of the findings drawn nearly and briefly is of no assistance for the aforestated facts of this case. The ratio in A. K. Roy v. Union of India ((1982) 1 SCC 271 : 1982 SCC (Cri) 152) that the aid of friend could be taken to assist the detenu and in Pett. v. Greyhound Racing Association Ltd. ((1968) 2 All ER 545 : (1968) 2 WLR 1471), the right to appoint an agent to represent the case of the petitioner are also of no assistance since the rule expressly excluded such a representation. The ratio in Union of India v. H. C. Goel ((1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38) also does not help the respondents for the reasons that it is not a case of no evidence and the conclusions were reached on the basis of the admission made by the respondents. The ratio in Bareilly Electricity Supply Co. Ltd. v. Workmen ((1971) 2 SCC 617) also does not apply to the facts of this case for the reason that the need to examine the witnesses on behalf of the Board was obviated by the admissions made by the examinees. The ratio in Shanti Prasad Jain v. Director of Enforcement ((1963) 2 SCR 297 : AIR 1962 SC 1764 : (1963) 33 Comp Cas 231] is equally of no assistance to the respondents since the contention that the circumstances under which fabrication of the moderators' mark sheets came to be made is not a relevant fact. Therefore, there is no need to examine the concerned officials in the State Board to explain as to how and who dealt with the papers from the time recounting was done in the office till the moderators' mark sheets were sent to Pune to feed the computer. The ratio in Merla Ramanna v. Nalaparaju ((1955) 2 SCR 938 : AIR 1956 SC 87) and Kashinath Dikshita v. Union of India ((1986) 3 SCC 229 : 1986 SCC (L&S) 502 : (1986) 1 ATC 176) also do not assist the respondents for the reasons that the answer books of the concerned students, the marks awarded by the examiners or addition or alteration, if any, made by the moderators and fabrication of the moderators' mark sheets were admittedly given for personal inspection to the concerned students and an opportunity given to them to inspect the record and thereafter they made admission. The further contention of Sri Cama that the Standing Committee did not deal individually with the answers given by each student and the decision was not based on evidence is without force as the conclusions are based on the admissions. Equally the need to consider each case on merits is obviated by the admission made by every student. The ratio in Government Medical Store Depot,

Karnal v. State of Haryana ((1986) 3 SCC 669 : 1986 SCC (Tax) 711 : (1986) 3 SCR 450, 454) that the charges are vague is also of no assistance to the facts of this case. The ratio in Kesoram Cotton Mills Ltd. v. Gangadhar ((1964) 2 SCR 809, 825 : AIR 1964 SC 708 : (1963) 2 LLJ 371) that the documents must be supplied at least 48 hours in advance is also of no help to the respondents in view of the admissions made by the respondents. The ratio in Tej Pal Singh case ((1986) 3 SCC 604 : 1986 SCC (L&S) 688 : (1986) 3 SCR 428) that mere inspection of the documents will not cure the defect of procedure or violation of principle of natural justice also does not apply to the facts of this case. The ratio in State of Punjab v. Bhagat Ram ((1975) 1 SCC 155 : 1975 SCC (L&S) 18 : (1975) 2 SCR 370) that the supply of synopsis of the material is not sufficient compliance with the principle of natural justice, also does not render any assistance to the respondents. The ratio in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha ((1980) 2 SCC 593 : 1980 SCC (L&S) 197 : (1980) 2 SCR 146, 202) that the conclusion and the findings are in different handwritings, which would show the non-application of the mind to the facts and it violates the principle of natural justice also does not apply to the facts of this case. The ratio in Union of India v. Mohd. Ramzan Khan ((1991) 1 SCC 588 : JT (1990) 4 SC 456) also does not apply to the facts in this case as the report is solely based on the admission made by the examinees and no new material has been relied upon by the Enquiry Officers. Undoubtedly, it is settled law that the right to life includes right to reputation and livelihood and that the individual as an entity is entitled to the protection of Article 21, but in view of the facts of this case the ratio in Viswa Nath v. State of J & K ((1983) 1 SCC 215 : 1983 SCC (Cri) 173) and Olga Tellis v. Bombay Municipal Corporation ((1985) 3 SCC 545) also do not help the respondents. The further contention of Sri Salve that the order must be a speaking order preceded by a fair enquiry and the report must be based on cogent evidence, and in this case all the requirements are lacking is also an argument of despair. Therefore, for the reasons given earlier, the argument stands rejected.

24. The next contention that the notification is vitiated for the reasons that the Standing Committee itself did not record any reason in support of its conclusion that the examinees or the parents or the guardians are parties to the fabrication cannot be sustained for the reason that the regulation itself postulates that if the Committee disagrees with the Enquiry Officer then only it is obligatory to record reasons. Since the Committee agreed with the report, there is no need, on their part, to record the reasons. The impugned notification, therefore, is not vitiated by violation of the rules of natural justice.

25. The crucial question, therefore, is whether the conclusions reached by the authorities that the examinees, their parents or guardians were parties to the fabrication and whether their complicity was established from record and whether the evidence was sufficient to support such conclusion reached by the Standing Committee or the Enquiry Officer.

26. Counsel on either side generated considerable debate on "the standard of proof" in a domestic enquiry. Sri Jaitley placed reliance on paragraph 19 of Vol. 17 of Halsbury's Laws of England, 4th edn. at page 16, which reads thus :

> "19. Standard of proof. - To succeed on any issue the party bearing the legal burden of proof must (1) satisfy a judge or jury of the likelihood of the truth of his case by adducing a greater weight of evidence than his opponent, and (2) adduce evidence sufficient to satisfy them to the required standard or degree of proof. The standard differs in criminal and civil cases.
>
> In civil cases the standard of proof is satisfied on a balance of probabilities.

> However, even within this formula variations in subject matter or in allegations will affect the standard required; the more serious the allegation, for example fraud, crime or professional misconduct, the higher will be the required degree of proof, although it will not reach the criminal standard.
>
> In criminal cases, the standard required of the prosecution is proof beyond reasonable doubt. This standards is also requisite in cases of committal for contempt, and in pension claims cases.
>
> In matrimonial cases it seems that proof on balance of probabilities is sufficient.
>
> Once a matter is established beyond reasonable doubt it must be taken for all purposes of law to be a fact, as there is no room for a distinction between what is found by inference from the evidence and what is found as a positive fact."

and contended that the standard of proof of fabrication of record in a domestic inquiry does not differ from criminal charge and it must be of a higher degree. In the Board of High School and Intermediate Education, U.P. v. Bagleshar Persad ((1963) 3 SCR 767 : AIR 1966 SC 875 : 1963 All LJ 676), relied on by Sri Andhyarujana the facts were that the appellant Board accepting the findings of the Committee that the respondent used unfair means in answering the subjects, cancelled the declaration of the results of the respondent in the High School Certificate Examination held in 1960. The charges were based on the facts that in the Hindi paper the respondent gave wrong answers to a particular question in the same way in which the answers have been given by another candidate who was having consecutive number. The High Court held that the findings of the Committee were based on no evidence and quashed the cancellation of the results. On appeal, this Court held that the respondent admitted that the mistakes in answers in the two papers were identical and he pleaded that he could not say anything as to why this happened. The proof of charges was inferred that as either the respondent copied from the answer book of the candidate with the consecutive number or that it was conveyed by the said candidate or that both of them had copied from another source. It was accordingly held that it would amount to the adoption of unfair means. The High Court, therefore, committed error in assuming that there is no evidence in proof of it. At page 774 this Court further held the in dealing with question as to whether the Committee was justified in arriving at its conclusion against the respondent it would not be reasonable to exclude from the consideration of the circumstances on which the whole enquiry came to be held and the general background of the atmosphere in the examination hall. It was also further held at page 775 that educational institutions like the universities set up enquiry committees to deal with the problem of adoption of unfair means by candidate and normally it is within the jurisdiction of such domestic tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of the adoption of unfair means direct evidence may sometimes be available but cases may arise where direct evidence is not available and the question will have to be considered in the light of the probabilities and circumstantial evidence. This is the problem with the educational institutions. How to face it, is a serious problem and unless there is justification to do so, court should be slow to interfere with the decisions of domestic tribunal appointed by the educational body like universities. In dealing with the validity of the impugned order passed by the universities under Article 226 the High Court is not sitting in an appeal over the decision on this question. Its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence, the High Court may be justified to quash the order. But the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether the possibilities and circumstantial evidence do not justify the said conclusion. The enquiry held by

domestic tribunals in such cases must, no doubt be fair and the students must be given adequate opportunity to defend themselves and in holding such enquiries, the tribunal must follow the rules of natural justice. Accordingly, it was held that the appeal was allowed and the order of the High Court was set aside and that of the domestic tribunal was confirmed.

27. In Bihar School Examination Board v. Subhas Chandra Sinha ((1970) 1 SCC 648 : (1970) 3 SCR 963) this Court emphasised that the essence of an examination is that the worth of every person is appraised without any assistance from an outside source. The academic standards require that the authority's appreciation of the problem must be respected. A full-flagged judicial inquiry was not required. It is not necessary to conduct an inquiry in each individual case to satisfy itself who are the candidates that have adopted unfair means when the examination as a whole had to go. It was further held at p. 968-F to H that : (SCC p. 652, para 14)

> "While we do not wish to whittle down the requirements of natural justice and fair play in cases where such requirement may be said to arise, we do not want that this Court should be understood as having stated that an inquiry with a right to representation must always precede in every case, however different. The universities are responsible for their standards and the conduct of the examinations. The essence of the examinations is that the worth of every person is appraised without any assistance from an outside source ....
>
> The University or the Board cannot hold a detailed quasi-judicial inquiry with a right to its alumni to plead and lead evidence etc. before the results are withheld or examinations cancelled. If there is sufficient material on which it could demonstrated that the Authority was right in its conclusion that the examination ought to be cancelled then academic standards require that the Authority's appreciation of the problem must be respected. It would not be for the courts to say that we should have examined all the candidates or even their representatives with a view to ascertaining whether they had receive assistance or not. To do this, would encourage indiscipline, if not also perjury."

It is true as stated by Sri Chidambaram that the above ratio was laid in the context of the cancellation of examination of the entire centre. But the general principles must be kept in view while dealing with the problem faced by the academic institutions.

28. In Seth Gulabchand v. Seth Kudilal ((1966) 3 SCR 623 : AIR 1966 SC 1734), this Court held that there is no difference between cases in which charges of a fraudulent or criminal character are made and cases in which such charges are not made. While striking the balance of probability, the court would keep in mind the presumption of honesty and innocence or the nature of the crime or fraud charged. The rules applicable to circumstantial evidence in criminal cases would not apply to civil cases. The ordinary rules governing civil cases of balance of probabilities will continue to apply.

29. In Ghazanfar Rashid v. Secretary, Board of High School and Intermediate Education, U.P. (AIR 1979 All 209 : 1979 All LJ 676 : 1979 AWC 380) a Full Bench, speaking through our learned brother K. N. Singh, J. (as he then was) dealing with the standard of proof of the charge of use of unfair means at the examination, it was held that it was the duty of the Examination Committee etc., to maintain purity of examination and if examinee is found to have used unfair means at the examination, it is the duty of Examination Committee to take action against the erring examinees to

maintain the educational standard. Direct evidence is available in some cases but in large number of cases direct evidence is not available. In that situation the Examination Committee has of necessity to rely on circumstantial evidence which may include the answer given by the examinee, the report of the Superintendent of the centre, the invigilator and the report of the experts and other attending circumstances. The Examination Committee, if it relies upon such evidence to come to the conclusion that the examinee has used unfair means in answering questions then it is not open to the High Court to interfere with that decision, merely because the High Court may take a different view on reassessment of those circumstances. While in its open to the High Court to interfere with the order of the quasi-judicial authority, if it is not supported by any evidence or if the order is passed in contravention of the statutory provisions of the law or in violation of the principles of natural justice, the court has no jurisdiction to quash the order merely on the ground that the evidence available on record is insufficient or inadequate or on the ground that different view could possibly be taken on the evidence available on the record. The Examination Committee has jurisdiction to take decision in the matter of use of unfair means not only on direct evidence but also on probabilities and circumstantial evidence. There is no scope for importing the principles of criminal trial while considering the probative value of probabilities and circumstantial evidence. The Examination Committee is not bound by technical rules of evidence and procedure as are applicable to courts. We respectfully agree with the ratio.

30. In Miller v. Minister of Pensions ((1947) 2 All ER 372, 374 (KB)) Denning J., as he then was, reiterated that the evidence against the petitioner must have the same degree of cogency as is required to discharge a burden in a civil case. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say : "We think it more probable than not, the burden is discharged but, if the probabilities are equal, it is not."

31. In State of U.P. v. Chet Ram ((1969) 2 SCC 425 : 1989 SCC (Cri) 388), relied on by Sri Chidambaram, this Court dealt with the proof of guilt of the accused at a criminal trial. This Court held that when two views are plausible, the view being taken must have some content of plausibility in it and without the same, the other view cannot be countenanced in law as a plausible alternative. It must be remembered that at a criminal trial the burden of proof is always on the prosecution. It must establish the guilt of the accused beyond all reasonable doubt. If there exists a plausible alternative views, its benefit must be extended only to the accused and not to the prosecution. Therefore, the ratio therein is inapplicable to a proceeding either in the civil case or in an enquiry before a domestic tribunal. State of U.P. v. Krishna Gopal ((1988) 4 SCC 302, 314 : 1988 SCC (Cri) 928) also relates to criminal trial. In paragraph 26 in assessing the evidence adduced by the prosecution, this Court laid that the concept of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degree of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on the robust common sense and, ultimately, on the trained institutions of the judge. In evaluating the circumstantial evidence in Hanumant v. State of M. P. (1952 SCR 1091, 1097 : AIR 1952 SC 343 : 1953 Cri LJ 129) the Court approved the statement of Baron Alderman in Reg v. Hodge ((1938) 2 Lew 227 : 168 ER 1136) that :

> "The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories

and necessary to render them complete."

32. It was held that in evaluating the evidence of circumstantial nature it is the duty of the prosecution that all the circumstances must be fully established and the circumstances should be consistent only with the hypothesis of the guilt of the accused. This standard of proof also is not relevant nor to be extended to consider the evidence in an inquiry by the domestic tribunal. The ratio in Bank of India Ltd. v. J. A. H. Chinoy (AIR 1950 PC 90 : 77 IA 76 : ILR 1950 PC 606), that the appellate court would be reluctant to differ from conclusion of the trial Judge if his conclusion is based on the impression made by a person in the witness box is also not germane for the purpose of this case. It was laid therein that inferences and assumptions founded on a variety of facts and circumstances which, in themselves, offer no direct or positive support for the conclusion reached, the right of the appellant court to review this inferential process cannot be denied. While dealing with proof of fraud it was held that speculation is not enough to bring home a charge of fraudulent conspiracy.

33. In Khawaja v. Secretary of State for the Home Department ((1983) 1 All ER 765 (HL)), dealing with the functions of the Immigration Authorities and of the courts, Lord Wilberforce at p. 777, laid the law that the allegation that permission to enter into the country by an immigrant was obtained by fraud or deceit being of a serious character and involving issues of personal liberty requires a corresponding degree of satisfactory evidence. If the court is not satisfied with any part of the evidence, it may remit the matter for reconsideration or itself receive further evidence. It should quash the detention order where the evidence was not such as the authority should have relied on or where the evidence received does not justify the decision reached or, of course, for any serious procedural irregularity. At p. 784 Lord Scarman held that it is not necessary to import in the civil proceedings of judicial review the formula devised by judges for the guidance of juries in criminal cases. The reviewing court will, therefore, require to be satisfied that the facts which are required for the justification of the restraint put on liberty do exist. The flexibility of the civil standard of proof suffices to ensure that the court will require the high degree of probability which is appropriate to what is at stake. The nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue. Therefore, the civil standard of flexibility be applied to deal with immigration cases.

34. In Sodhi Transport Co. v. State of U.P. ((1986) 2 SCC 486 : 1986 SCC (Tax) 410 : (1986) 1 SCR 939, 954), this Court dealing with rebuttable presumption held that : (SCC p. 496, para 14)

> "A presumption is not in itself evidence but only makes a prima facie case of party in whose favour it exist. It is a rule concerning evidence. It indicates the person on whom the burden of proof lies. When presumption is conclusive, it obviates the production of any other evidence to dislodge the conclusion to be drawn on proof of certain facts. But when it is rebuttable it only points out the party on whom lies the duty of going forward with evidence on the facts presumed, and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed the purpose of presumption is over. Then the evidence will determine the true nature of the fact to be established. The rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts and circumstances."

35. Bhandari v. Advocates Committee ((1956) 3 All ER 742 : (1956) 1 WLR 1442 (PC)), is also a case concerning the professional misconduct. In proof of the charge it was held that it is the duty of

the professional domestic tribunal investigating the allegation to apply a high standard of proof and not to condemn on a mere balance of probabilities. In Glynn v. Keele University ((1971) 2 All ER 89 Ch D), relied on by Sri Salve, the question arose whether failure to give an opportunity to the students before the suspension is violative of the principles of natural justice. It was held that the student did not deny commission of the offence, therefore, it was held that the student suffered no injustice by reason of the breach of the rules. Further while dealing with the scope of the inquiry by the domestic tribunal, it was held that the society is charged with the supervision and upbringing of the pupil under tuition, be the society, a university or college or a school. Where relationship exists it is quite plain that on the one hand in certain circumstances the body or individual acting on behalf of the society must be regarded as acting in a quasi-judicial capacity - expulsion from the society is the obvious example. On the other hand, there exists a wide range of circumstances in which the body or individual is concerned to impose penalties by a way of domestic discipline. In those circumstances the body or individual is not acting in a quasi-judicial capacity at all but in a ministerial capacity, i.e. in the performance of the rights and duties vested in the society as to the upbringing and supervision of the members of the society. No doubt there is a moral obligation to act fairly, but this moral obligation does not lie within the purview of the court in its control over quasi-judicial acts. The ratio relied on by Shri Salve, far from helping the respondents, is consistent with our view. The ratio in Re an Advocate (An Advocate v. Bar Council of India, 1989 Supp 2 SCC 25 : 1989 SCC (Cri) 625 : AIR 1989 SC 245), also concerned with professional misconduct of an advocate and higher standard of proof of the charge of misconduct was insisted upon. Equally so in Shri Krishan v. Kurukshetra University, Kurukshetra ((1976) 1 SCC 311 : AIR 1976 SC 376). These decisions relied on by Sri Jaitley also do not assist us.

36. The contention of Sri Cama placing any reliance on Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi ((1987) 1 SCC 227 : (1987) 1 SCR 458), that the Vice Chancellor would not have done what he did except with the instructions of the Chief Minister who was be benefited getting his daughter passed M. D. was not accepted by this Court and that it was further contended that the benefit test is a preposterous one and the preponderance of probabilities is not possible to be deduced from the test, does not appear to be sound. This Court noted that the Chief Minister was not prepared, as suggested by the Division Bench, to face an inquiry and that, therefore, substituted to the findings of the Division Bench, in the penultimate paragraph of the judgment that the court would be cognizant of the steep decline of public standards, public moral and public morale which have been contaminating the social environment and emphasised that (SCC p. 253, para 51) "where such situations cry out the courts should not and cannot remain mute and dumb" and it is necessary to cleanse public life.

37. It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred, as much as is practical, as if they had been actually observed. In other

cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inferences fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt "but" the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquires.

38. From this legal setting we have to consider whether the inference deduced by the Education Standing Committee that the fabrication of moderators' mark sheets was done at the behest of either the examinee or the parent or guardian is based on the evidence on record. It is already found that the examinees admitted the forgery of their concerned moderators' mark sheets resulting in the increase of marks to their advantage. The fabrication of the moderators' mark sheets was done after the scrutiny by the concerned officials in the office of the State Board at Bombay and before the moderators' mark sheets were taken out to Pune to feed the computer. Why one is expected or interested to wade through eighty thousand moderators' mark sheets to locate only the 283 examinees' mark sheet and add marks by fabrication ? Unless either the examinee or parent or guardian approached fabricator; gave the number and instructed him/them to fabricate the marks, it would not be possible to know their number to fabricate. The act of fabrication is an offence. Merely that it was done in one subject or more than one makes little difference. Its gravity is not mitigated if it is committed in one subject alone. This is not an innocent act or a casual mistake during the course of performance of the official duty as is sought to be made out. It was obviously done as concerted action. In view of the admitted facts and above circumstances the necessary conclusion that could unerringly be drawn would be that either the examinee or the parent or guardian obviously was a privy to the fabrication and that the forgery was committed at his or her or parent's or guardian's behest. It is, therefore, clear that the conclusion reached by the Educational Standing Committee that the fabrication was done at the instance of either the examinees or their parents or guardians is amply borne out from the record. The High Court in our view overstepped its supervisory jurisdiction and trenched into the arena of appreciation of evidence to arrive at its own conclusions on the specious plea of satisfying 'conscience of the court'.

39. The question then is whether the rules relating to mode of punishment indicated in the Appendix 'A' to the resolution are invalid. We have given our anxious thought to the contention and to the view of the High Court. In our view the punishments indicated in the last column is only the maximum from which it cannot be inferred that it left no discretion to the disciplinary authority. No axiomatic rule can be laid that the rule making authority intended that under no circumstances, the Examination Committee could award lesser penalty. It depends on the nature and gravity of the misconduct to be dealt with by the disciplinary authority. In a given case, depending on the nature and gravity of the misconduct lesser punishment may be meted out. So by mere prescription of maximum penalty rules do not become invalid.

40. We have no hesitation to conclude that when the evidence justified the Education Standing Committee to record the finding that the examinees, parents or guardians are parties to the fabrication, it is not open to the High Court under Article 226 to itself evaluate the evidence and to interfere with the finding and to quash the impugned notification. This Court under Article 136 has to correct the illegalities committed by the High Court when it exceeded its supervisory jurisdiction

under Article 226. In view of the fair attitude adopted by the counsel for the Board, it is not necessary to go into the question of quantum of punishment.

41. In the light of the above finding, normally the appeals are to be allowed, the Judgment of the High Court set aside and the impugned notification dated August 31, 1990 upheld in toto. But we modify the High Court's order as per the directions given in our order dated January 30, 1991, wherein we accepted the signed statement by the counsel for the Board without prejudice to their contention and directed the Board (a) to allow the candidates referred to in the Notification of August 31, 1990 to appear at the SSC examination to be conducted in March 1991 by the Board; and (b) to declare the untampered results of nine named candidates therein. The failed candidates covered by the notification and are willing to appear in the ensuing examination of March 1991, their applications will be accepted if the same are submitted on or before February 13, 1991 through Heads of their respective schools. So far as the other candidates are concerned, their results shall not be declared, but they will be permitted to appear in the ensuing examination of the Board to be held in March 1991 in case their applications have been received before February 13, 1991 through Heads of their respective schools. In this regard the Board shall inform all the concerned schools and will also give due publicity in the two local newspapers within 3 days. The Board was further directed to consider the cases of such candidates out of 283 who are similar to the nine named candidates other than respondent 17, Deepa V. Agarwal and in their cases also the untampered result shall be declared on or before February 6, 1991 and we are informed that results of 18 more candidates were declared.

42. The notification dated August 31, 1990 is upheld subject to above modification and shall be operative between the parties. Before parting with the case we impress upon the appellant to have in depth investigation made expeditiously, if need be, with the assistance of CBCID, of the racket of fabrication and bring the culprit to justice.

43. The appeals are allowed accordingly, but in the circumstances parties are directed to bear their own costs.

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