
(2005) 01 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5147 of 2004

Anand Mohan Jha and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 18-01-2005

Acts Referred:

Board of Secondary Education Rules — Rule 21(6)(O)
Constitution of India, 1950 — Article 14, 226

Citation : (2005) 2 RLW 1365 : (2005) 2 WLC 519

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

**Advocate : G.G. Sharma, R.D. Sharma and V.K. Sharma, for the Appellant;
Sandeep Saxena, for the Respondent**

Final Decision : Dismissed

Judgement

K.S. Rathore, J.

1 The petitioners have filed this joint writ petition challenging the order passed by the Board of Secondary Education, Rajasthan, Ajmer by which their examinations are cancelled on account of mass copying.

2. The petitioners appeared for the examination of Senior Secondary School (Science), 2004 held in the month of March 2004, as regular students of Govt. Senior Secondary School, Tapukara, Tehsil Tijara, District Alwar, during the course of examination the examiner has made the complaint regarding mass copying. The matter was examined and after following due process of law the petitioners' examination for 2004 has been cancelled.

3. Being aggrieved and dissatisfied with the order dated 25.7.2004 passed by the respondent No. 2 the petitioners preferred the writ petition on the ground that all the petitioner having brilliant academic careers and most of the petitioners have secured more than 60% marks. The allegations are alleged against the mass copying against the 50 students out of them result of 11 students has been

declared whereas the petitioners" numbering 39 have been cancelled. The action of the respondents is absolutely contrary to the provisions of law and also in violation of the principle of natural justice as well as discriminatory.

4. Learned counsel for the petitioners submits that the respondent No. 2 issued the notice dated 17.6.2004 to all the petitioners. In this show cause notice three charges have been levelled but all three charges have not been substantiated by any evidence whatsoever.

5. Learned counsel for the petitioners further submits that the respondent No. 2 with the ulterior motive and adopting discriminatory attitude has cancelled the petitioners" examination whereas the benefit of doubt is given to 11 students.

6. It is further submitted that there are allegations of mass copying against 50 students out of which 11 students have been picked up, this shows discriminatory attitude of respondent No. 2. No reason has been assigned as to why 39 petitioners have been left and the result of 39 students has not been declared.

7. Learned counsel for the petitioners also submits that this is not a case of respondents that the petitioners were caught red handed by invigilator or by flying squad. Since they have not been caught red handed, no material evidence is available with the respondent No. 2 regarding mass copying. Since there is no intrinsic evidence to prove charges, cancellation of examination is wrong and not permissible under law as held by Allahabad High Court.

8. Learned counsel for the petitioners referred the case of Kumari Sandhya Sharma v. Board of High School & Intermediate Education, U.P. Allahabad (AIR 1983 All 44) wherein Division Bench of Allahabad High Court has held that cancellation of examination of petitioner, a candidate, on ground of use of unfair means-Charge based merely on report of examiner that answer to a question, given by petitioner was strikingly similar with answers of other candidates. The High Court on examination of answer books found that there was no intrinsic evidence to prove charge and order cancelling examination of petitioner on mere suspicion could not be sustained.

9. In support of his submissions learned counsel for the petitioners placed reliance on the judgment rendered by the Hon"ble Supreme Court in the case of Sarat Kumar Panigrahi v. the Secy. Board of Secondary Education, Orissa (2003 (2) SC 386). The Hon"ble Supreme Court has opined that the Courts can certainly examine whether the decision making process was reasonable, rationale and not arbitrary on the facts and circumstances in each case. There has been no infirmity in the decision making process by the Commissioner. It is further held that the impugned action initiated by the Commission in cancelling the examination of respondents No. 1 and debarring him is well founded and calls for no interference.

10. Learned counsel for the petitioners also placed reliance on the judgment

rendered by the Gujarat High Court in the case of Dipakkumar Narsibhai Patel Vs. North Gujarat University and Others, The single Judge of Gujarat High Court has held that cancellation of examination of student relying, only on report of observer-Improper-Moreso when despite having sufficient time, observer failed to record statements of concerned student as well as senior and block supervisor at relevant time.

11. In support of his submissions on the basis of arbitrary action he also referred the case of Pradeep Singh Chauhan v. University of Lucknow and Ors. (AIR 1983 All 427) and the case of Bihar Public Service Commissioner and Anr. v. Vinoy Kumar Singh and Anr. (2003 (5) Supreme 312) the Hon"ble Supreme Court in the aforesaid cases has held that the Courts can certainly examine whether the decision making process was reasonable, rationale and not arbitrary on the facts and circumstances in each case. There has been no infirmity in the decision making process by the Commission.

12. After referring the aforesaid judgments he submits that in the instant case the respondents have not acted properly and the action itself shows that arbitrary as well as discriminatory attitude has been adopted by the respondents while cancelling the examination of the petitioners.

13. It is also submitted that the action of the respondent No. 2 is discriminatory because the Hon"ble Supreme Court in the case of Rajesh Kumar and Another Vs. Institute of Engineers (India), has held that the novel method of cramming test adopted by the Institute by itself cannot render evidence of conspiracy between the candidates to adopt unfair means-Hence earlier decision of the Institute of cancelling the result of appellants" examination and debarring them from appearing in two immediately following examinations was not justified.

14. Learned counsel for the petitioners also distinguished the judgments referred by the respondents and categorically stated that the judgments referred by the respondents are not applicable to the instant case.

15. Per contra learned counsel appearing on behalf of the respondent No. 2 has controverted all the allegations and submissions made on behalf of the petitioners. He submits that the respondents have acted fairly and strictly in accordance with the provisions of law. After issuing show cause notice and thoroughly examination of the answer books by the experts they only arrived at the conclusion and out of 50 students 11 students were not found guilty in B part and when the answer were asked by the hearing officers they have satisfied them, at such a level the benefit of doubt has been granted to them by the result committee.

16. He further submits that a written complaint was given by the examiner and, which was received by the respondent Board regarding students having indulged into mass copying. Immediately after receipt of the complaint the Board appointed officers for conducting inquiry to find out true report about the whole 50 students. It was also decided in the meeting of result committee on

16.5.2004 and after decision the show cause notices were issued to all the students including the petitioners and opportunity of personal hearing was given to each of the student wherein they were specifically asked to write answers to certain questions from the paper of Biology I part A and part B except the eleven all students denied to do so and did not answer the questions whereas the 11 students have given the answers. Thereafter the Inquiry Officer gave opportunity to explain and after taking into account the reply/explanation of the petitioners and after examining the entire proceeding of the inquiry gave a detailed report in consequence where of the Board vide order dated 20.7.2004 has passed the order of cancelling the examination vide order dated 24.7.2004 under Rule 21 (6) (O) of the Rules of Board of Secondary Education. The same was communicated to all the petitioners through Govt. Sr. Sec. School, Tapukara, Distt. Alwar.

17. The allegation of discrimination is also vehemently denied and it is submitted that the respondent Board has not acted discriminatory as the 11 students have given right answer and satisfied the examination Board and after perusal of the answer sheets the results were declared whereas 39 students have not properly answered and by perusal of their examination sheets it appears that mass copying were there and, therefore, the allegation regarding discrimination is baseless. Not only this the Board has written a letter dated 9.8.2004 to the Dy. Director Education, Jaipur with the request to take action against the persons responsible at the centre Govt. Sr. Sec. School, Tapukara, Tehsil Tijara, Distt. Alwar.

18. In support of his submissions he placed reliance on the judgment rendered by this Court in the case of Shyam Sundar and Ors. v. The State of Raj. and Ors. (S.B. Civil Writ Petition No. 5270/2003), wherein this Court considering the judgment rendered by the Hon''ble Supreme Court in the case of B. Ramanjini and Others Vs. State of Andhra Pradesh and Others, has held that mass copying constitutes enough reason for cancelling of examination. After taking view of the Hon''ble Supreme Court this Court has arrived at conclusion that the action of the respondents in cancelling the result of the petitioners cannot be said to have been suffered from any basic infirmity and illegality and cannot be said to be violative of article 14 of the Constitution of India nor it can be said that any of the legal rights of the petitioners has been infringed in this case and hence the petitioners are not entitled to get any relief under Article 226 of the Constitution of India and this writ petition deserves to be dismissed and the same was dismissed.

19. Petitioners also referred the judgment, which was relied by the learned single Judge in the case of B. Ramanjini and Ors. v. State of A.P. and Ors. (supra), wherein the Hon''ble Supreme Court has held that mass copying and leakage of question papers, constituted enough reason for cancelling of examination.

20. The Hon''ble Apex Court further observed that even otherwise, in the conduct of the examination, a fair procedure has to be adopted. Fair procedure would

mean that the candidates taking part in the examination must be capable of competing with each other by fair means. One cannot have an advantage either by copying or by having a foreknowledge of the question paper or otherwise. In such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same.

21. As directed by this Court learned counsel for the respondent Board has placed the original record for perusal.

22. Heard rival submissions of the respective parties and perused the material available on the record as well as the judgments referred by the respective parties. I also carefully perused the original record.

23. This is not disputed that 50 students has given examination of Sr. Secondary and the centre was Govt. Sr. Sec. School, Tapukara, Tehsil Tijara, Distt. Alwar. The complaint was filed by the examiner regarding mass copying by all the 50 students. Pursuant to the allegation of mass copying the show cause notice dated 17.6.2004 was issued by the respondent Board.

24. To resolve the controversy it is necessary to examine that the action was taken by the respondent Board after receipt of the complaint filed by the examiner regarding mass copying. It appears by perusal of the original record as well as the reply submitted on behalf of the Board that immediately after receipt of the complaint the Board constituted a Committee. As per the decision taken by the Result Committee on 16.5.2004 it was decided that show cause notice be issued to the students showing the reason as to why their examination be not cancelled.

25. It is also not disputed that opportunity of personal hearing was given to each of the student. The Committee has found that the answer sheets are having a deto answers. During the course of personal hearing it also appears that except 11 students 39 petitioners have refused to give the answer to certain questions, which are asked by the Committee. Only 11 students have given the answers and the Committee found satisfied with the answers given by the 11 students.

26. I also perused the original report wherein it was categorically stated that answer sheets of the 11 students does not find similar answers, which can prove the mass copying against 11 students, therefore, 11 students can be given benefit of doubt and their result of examinations were declared.

27. Now the question remains with regard to the 39 petitioners. In view of the original report it appears that 39 students have not answered the questions/ queries asked by the Committee on the contrary their answer sheets was found similar and deto answers, which support the allegations of mass copying. Therefore, their very examination for which they appeared has been cancelled. It also appears that the petitioners are not debarred to appear in the next examination but only their present examination has been cancelled.

28. In the light of the factual matrix I also perused the judgments referred by the petitioners. As the petitioners placed heavy reliance on the judgment rendered by the Allahabad High Court in the case of Kumari Sandhya Sharma v. Board of High School & Intermediate Education, U.P. Allahabad (supra), upon careful perusal of the judgment rendered by the Division bench of Allahabad High Court, it appears that the Division Bench of the Allahabad High Court has examined the answer sheets of the petitioner Kumari Sandhya Sharma and after examining the same it was found that there are no cutting etc. It was also observed that there is possibility that the other candidates might have copied from the answer-book of the petitioner, but there is not positive evidence to that effect also. In these circumstances the petitioner's result could not have been cancelled and the writ petition was allowed.

29. Here in the instant case the ratio decided by the Division Bench of the Allahabad High Court is not applicable as the answer sheet, which is examined by the Committee has found that all the answers of the 39 students are same and there are cutting also as it evidence the perusal of the report.

30. Further reliance has been placed on the judgment rendered by the Hon''ble Supreme Court in the case of Bihar Public Service Commission and Anr. v. Vinoy Kumar Singh and Anr. (supra), wherein the Hon''ble Supreme Court has laid down the principles and opined that the Courts can certainly examine whether the decision making process was reasonable, rationale and not arbitrary on the facts and circumstances of the individual case. In this instant case also the Hon''ble Supreme Court has found that the impugned action initiated bay the Commission in cancelling the examination of respondent No. 1 and debarring him is well founded and calls for no interference.

31. Obeying the principle as laid down by Hon''ble Supreme Court, I also carefully examined whether the decision taken by the Board was reasonable, rationale and not arbitrary. Upon perusal of the original record it appears that the action of the respondents No. 2 cannot said to be arbitrary and unreasonable. Therefore, I also agree with the principle laid down by the Supreme Court and the principle laid down by Hon''ble Supreme Court is fully applicable to the instant case also and decision taken by the Board does not require by interference.

32. I also perused the judgment rendered by Hon''ble Supreme Court in the case of Rajesh Kumar and Anr. v. Institute of Engineers (India) (supra), wherein the Apex Court has held that the novel method of cramming test adopted by the Institute by itself cannot render evidence of conspiracy between the candidates to adopt unfair means. The facts and the circumstances of the case before the Hon''ble Supreme Court is altogether different and the ratio decided by the Hon''ble Supreme Court is not applicable to the instant case.

33. On the contrary the judgment, referred by learned counsel for the Board, of Shyam Sunder and Ors. v. The State of Raj. and Ors. (supra), relying upon the

judgment of the Hon"ble Supreme Court in the case of B. Ramanjini and Ors. v. State of A.P. and Ors. (supra), are fully applicable to the instant case.

34. I have given thoughtful consideration to the aforesaid judgment wherein the Hon"ble Supreme Court has held that even otherwise, in the conduct of the examination, a fair procedure has to be adopted. Fair procedure would mean that the candidates taking part in the examination must be capable of competing with each other by fair means. One cannot have an advantage either by copying or by having a foreknowledge of the question paper or otherwise. In such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same.

35. Having considered the judgments the present case is also not such a case where any interference is required by this Court while exercising power under Article 226 of the Constitution as the Board is having enough material and the Board after considering and following fair procedure has arrived at conclusion that their examination should be cancelled, which is in my considered opinion is just and proper and no interference whatsoever is required by this Court.

36. Consequently; the writ petition fails and is herewith dismissed with no order as to costs.