

(1992) 11 OHC CK 0021

In the Orissa High Court

Case No : OJC No"s. 4925 and 4928 of 1992

Asit Kumar Panigrahi and Sitakanta Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-11-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 76 CLT 260 : (1993) 1 OLR 410

Hon'ble Judges : B.L. Hansaria, C.J.;B.N. Dash, J

Bench : Division Bench

Advocate : A.K. Mohapatra, for the Appellant; S.S. Das, for the Respondent

Final Decision : Dismissed

Judgement

B.L. Hansaria, C.J.—The two petitioners in these two writ applications have assailed the decision taken by the Examination Committee of the Council of Higher Secondary Education to cancel in entirety the examinations of English Paper-I (Science) and English Papers-1 & 11 (Arts, regular and ex-regular) held in A. B. College centre, from where they had appeared. These examinations came to be cancelled by the Examination Committee relying on the reports of the Supervisor submitted to the Council. As both the cases have raised common questions of law and fact, they were heard together and are being disposed of by this judgment.

2. The petitioners are students of A. B. College, Basudevpur. The examinations in question were held in that college on 24-3-1992 and 26-3-1992. The examinations have come to be cancelled because after perusal of the report of the Supervisor submitted to the Council, the Examination Committee took the view that the present was a case of mass copying.

3. Shri Mohapatra does not challenge the power of the Examination Committee to cancel the entire examination in case of mass copying. His submission, however, is that the present were not such cases. This apart, it is alleged that

the entire thing was cooked up by opp. party No. 6, the Supervisor, on whose report the examinations were cancelled, who had some animus against the college at hand, because a clerk of Charampa College, where opp. party No. 6 is a lecturer, had once appeared in an examination from the college at hand and he was not permitted to do copying because of which he dropped. The said clerk is an influential person and is hand in glove with opp. party No. 6. Further, opp. party No. 6 is working in a college under the management of Congress (I), whereas the management of A.B. College, (with which we are concerned) is with the Janata Party.

4. We may first dispose of the allegation of mala fide. To say the least, it is absolutely unfounded. It is unbelievable that a clerk of Charampa College would prove so influential as to prevail upon a lecturer of that college to go absolutely out of his way. The allegations of that Charampa College is under the management of Congress(I) stands shattered to pieces because from the affidavit of opp. party No. 6 we find that the President of the Governing Body of that College is none else than Shri Prafulla Samal, Minister of Labour and Employment, Government of Orissa, and as such a member of the ruling Janata party. Not only this, opp. party No. 6 has named five other members of the Governing Body of that College in paragraph 5 of his counter affidavit, who belong to the Janata party. The tendency to make unfounded allegation of mala fide has become too common. We wish such an untruthful allegation were not made in the present cases.

5. Let us now examine whether on the basis of material on record, the examination Committee of the Council could have reasonably come to the conclusion that the present were cases of mass copying. The reports submitted by the Supervisor have been placed before us. The reports according to the learned counsel appearing for the Council, bring out the following features, as mentioned in his written note filed on 19-11-1992:

- "(1) Candidates were not checked at the entrance.
- (2) Candidates were trying to help each other to use incriminating materials.
- (3) Attempt in bringing outside assistance.
- (4) Incriminating materials found scattered in the exam, hall/ verandah.
- (5) Causing disturbances to other candidates in the hall.
- (6) Adopting unfair means outside the hall and entering exam, hall with incriminating materials.
- (7) Gathering of outsiders.
- (8) Their activities-Forcible entrance to supply incriminating materials, to help candidates.
- (9) General conditions and atmosphere that prevailed inside and outside the

exam, premises-howling and large shouting. Howling and high sound calls by the outsiders. Mass howling from every side."

6. Despite the aforesaid position emerging out from the reports of the Supervisor, which has been correctly depicted in the written note, as would appear from the originals which we have perused, Shri Mohapatra contends that the reports show that incriminating materials had been recovered only from 19 candidates whereas examination results of 310 candidates have been cancelled. According to the learned counsel, law did not permit cancellation of result of all the candidates merely because of some wrong committed by 19 candidates. The present was thus not a case of mass copying, according to the learned counsel, in which case alone cancellation of result in its entirety is permissible without following the principles of natural justice, which admittedly was not done in the present case.

7. Shri Das appearing for the Council, however, submits that to bring a case within the fold of mass copying, it is not necessary that copying in mass scale must be detected. There may be many other features present in a case which may lead any reasonable person to come to the conclusion that there was mass copying. Strong reliance has been placed by Shri Das in this connection on a Bench decision of Allahabad High Court in *Guardian Assurance Co. Ltd. Vs. Thakur Shiva Mangal Singh*. It has been stated in paragraph 5 of that judgment that as mass copying has not been defined (similar is the position here), the same has to be understood in common parlance. No test to bring a case within the ambit of mass copying can be laid down with mathematical precision, observed the Bench, by further saying that it would vary and has to be decided on circumstances of each case. The following was stated thereafter :

"It may be copying by a vast majority or on massive scale or in such large proportion that it was not possible to check it. From report of the flying squad which is corroborated by the Centre Superintendent of C.M.P. College, it is clear that no effective checking could be done on the gates. It has not been challenged anywhere in the writ petition. What is stated is that there was a large police force and Magistrate posted in the premises forgetting that responsibility of these officers was for law and order, and not checking of examinee. Their presence, therefore, was immaterial for deciding if there was effective checking at the gates. It further appears undisputed that large number of notes and books were found outside the examination hall. That by itself may not have been sufficient but the report of the flying squad that they had seen notes and books lying in every room on their arrival cannot be ignored. The detection of only few examinees on these checking also is not very material as even if after having come to know that flying squad had come certain students either due to misplaced bravery or sheer foolishness, retained the material from which they were copying then that could not alter the general tenor reflected in conduct of others. If all this is examined cumulatively then it leaves hardly any room for doubt that the conduct of examination in general was not fair and even if target

number of students were not using unfair means the atmosphere was such that holding of fair and proper examination stood ruled out."

8. On the aforesaid facts, it was held that a case of mass copying had been made out. While taking this view, the Bench was conscious, so are we of grave injustice which might be done to the students, may be even to majority, but deterioration in the standard of discipline of academic institutions ultimately prevailed. (see paragraph 7). What has happened in the present case can be said to be almost a replica of what was found in the aforesaid case by the Allahabad High Court, which would be apparent from the circumstances emerging from the reports of the Supervisor, which have been noted above. If a circumstance is created in which holding of fair and proper examination is ruled out, the same deserves to be viewed as seriously as mass copying, as is this concept ordinarily understood, because in that situation also there is no proper assessment of the merit of the examinee, which is the sole purpose of examination. The need to maintain educational standard and the manning of offices and professions by really qualified people, which larger public interest demands should be good grounds to regard those cases where fair and proper examination is not possible as akin to mass copying, which is abhorred because it does not allow to judge merit properly. Because of this, the former should be accepted, according to us, to come within the enlarged meaning of "mass copying" which is required to given purposeful interpretation keeping in view the evil it is sought to remedy. And if this purpose of stopping mass copying is kept in mind, a situation where holding of fair and proper examination is not possible, should be allowed to be in the womb of mass copying; it must be treated as conceptually very close to mass-copying-the dividing line between the two being very thin, so much so that one can be said to almost merge in the other.

9. If the situation was as portrayed above, we are of the view that it would have been open for any reasonable body or person to come to the conclusion that the atmosphere was such in which holding of fair and proper examination was not possible; and in that event, to cancel the examination by treating the present as cases of mass copying. Shri Mohapatra, however, contends that a Bench of this Court had taken a different view in OJC No. 6629 of 1991 (Sanjay Kumar Das v. Council of Higher Secondary, Education) decided on 20-7-1992. We have perused that judgment. The facts as found in that case were much different from the cases at hand. This would be apparent from the fact that the report of the flying squad (Annexure-A-1) relying on which the examination had been cancelled had only mentioned about two facts; (i) detection of incriminating materials from one candidate ; and (ii) incriminating materials being recovered from just outside the window, on the basis of which a recommendation was made that valuation of English Paper-II of Arts must be made strict as it was supposed that students were involved in malpractice. It is because of this that this Court set aside the cancellation of the entire examination, which was the decision arrived at by the Examination Committee. The present cases stand entirely on different facts.

10. Another decision sought to be pressed into service is the one rendered in OJC No. 4794 of 1992 (Panchagarh Somonath Singh Jagadev College v. Controller of Examinations, Council of Higher Secondary Education), which was disposed of on 8-9-1992. That decision was different inasmuch as in that case the cancellation notification was assailed on the ground of lack of jurisdiction and being violative of natural justice, because of the notification being non-speaking. Both the submissions did not find acceptance of the Court and the petition was dismissed. So that decision does not in any way assist the petitioners.

11. On 25-11-1992, a memorandum was filed by the learned counsel referring to some case laws. We have gone through those decisions and in none of them the question with which we are seized had come up for consideration. The first decision to be referred is that of Jayanta Kumar v. Utkal University, ILR 1973 Cuttack 740, in which the resolution of the Syndicate taken on 2nd March, 1973 was regarded as vitiated by error of record because that was even against the views of the Conducting Board. The second decision is that of Maran Das v. Gauhati University AIR 1973 Gau 19 in which one student was debarred from appearing in the examination because of which need for observance of natural justice was emphasised. The third decision is of Himendra Chandra v. Gauhati University AIR 1954 Assam 65, in which the question examined was whether certain percentage of marks were required for each paper or in aggregate to get the examination passed. Nitish Ranjan v. University of Calcutta AIR 1970 Cat. 207. was also a case where the question for examination was whether natural justice had been complied with. Similar was the decision in Rajkumar Agarwalla and Another Vs. University of Calcutta, . The case of Sidappa v. Karnataka University 1963(1) MLJ 408 was related to the power of the University to punish students by rustication for malpractice. In University of Calcutta v. Deepa Pal 1956 CWN 730 a Special Bench examined the question whether the action of the Syndicate in cancelling the examination could be upheld without any finding or report whatsoever from the Examination Board being before it. Choudhury Mohammad v. Registrar University of Calcutta. 82 CWN 480 was a case of cancellation of examination of one individual. The only other decision referred in the memorandum is the one reported in 1968 Current Law Journal 462, which is not available to us.

12. In the aforesaid view of the matter and the conclusion) arrived at by the Examination Committee being one to which any reasonable person reasonably instructed in law could have arrived at, no case for our interference in exercise of our power under Art. 226 of the Constitution has been made out. The petitions are, therefore, dismissed.

B.N. Dash, J.

13. I agree.