
(1988) 11 OHC CK 0006
In the Orissa High Court
Case No : OJC No. 1162 of 1988

Chandan Chakravarty

APPELLANT

Vs

Council of Higher Secondary Education and Others

RESPONDENT

Date of Decision : 15-11-1988

Acts Referred:

Orissa Higher Secondary Education Act, 1982 — Section 21, 30

Orissa Higher Secondary Education Regulations, 1982 — Regulation 77

Citation : (1989) 2 OLR 177

Hon'ble Judges : K.P. Mohapatra, J;A.K. Padhi, J

Bench : Division Bench

Advocate : J.P. Misra, for the Appellant; R.K. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Mohapatra, J.—In these two cases, common questions of law and fact are involved. Therefore, with the consent of learned Counsel appearing for the parties, they were heard together to be governed by this common judgment.

2. The Petitioners in both the cases challenge cancellation of the examinations and scratching of answer papers in English (Paper I), Economics (Paper II) and Physics (Papers II and II) of the Second Arts and Science Examinations, 1987 of the Council of Higher Secondary Education, Orissa, conducted at the panchayat College Centre, Bargarh in Sambalpur district.

3. The facts in brief may be narrated. Petitioner Santanu, and Arts student of the Panchayat College, Bargarh, appeared in English and Economics at the Second Arts Examination, 1987 of the Council of Higher Secondary Education. As he was sick, he was permitted by the Professor-in-charge of the Examination to sit for the examination in English papers in the sick room. But for some reason or other, he took the examination in Economics (Paper II) in the class room along with other examinees. Petitioner Chandan, a student of the same college appeared in English (Paper I) and Physics (Papers I and II) in the Second Science

Examinations, 1987 of the Council of Higher Secondary Education and took the examination along with the other examinees. The Examination Committee (opposite Party No. 3) of the Council of Higher Secondary Education, Orissa (opposite party No. 1) deputed a squad of supervisors to visit the examination centre of the Panchayat College, Bargarh, when examinations in English, Economics and Physics were being held. They found that the examinees resorted to malpractice, such as, mass copying. They were talking amongst themselves and outsiders were freely supplying incriminating materials to them and they were further shouting inside the college compound. When the examinees saw the squad of supervisors, they threw away the incriminating materials through the windows. The Principal, the Centre Superintendent and the Invigilators were found to be helpless spectators unable to control the examinees and conduct the examinations fairly and smoothly. After return, they submitted reports to the Examination Committee for scratching of the answer papers of English (Paper-I), Economics (Paper II) and Physics (Papers I and II). As a result, all these including the Petitioners who appeared in those subjects were not allotted marks in those subjects, for which they failed in the examination. It is stated by the Petitioners that they did not resort to malpractice and did not copy either. Petitioner Santanu specifically averred that he wrote the answer papers in English (Paper I) from the sick room and so there was no scope to resort to malpractice. Further, the Petitioners were not given opportunity by opposite party No. 1 to offer their explanation before scratching of the answer papers. Therefore, there was violation of the principles of natural justice. In the above background, the Petitioners have prayed that cancellation of the examinations and scratching of the answer papers should be quashed, the answer papers should be evaluated and if they come out successful by securing pass marks, their result should be announced.

4. Opposite party Nos. 1 to 3 have filed identical returns and have inter alia stated that the Examination Committee deputed a squad of supervisors to which the examination at the centre of the Panchayat College, Bargarh. They found that when examination in English (Paper I), Economics (Paper II) and Physics (Papers I and II) was going on, there was mass copying and malpractice resorted to by the examinees. They had taken incriminating materials into the examination hall and were using them.

When they saw the squad of supervisors, they threw away the incriminating materials through the windows. The examinees were freely talking amongst themselves and with the outsiders who had gathered inside the college compound. The Principal, the Centre Superintendent and the Invigilators were mute spectators and did not take any action to prevent the examinees from resorting to malpractice. Therefore, they submitted a report to the Examination Committee for scratching of the answer papers of all the students who had appeared in the examination in the aforesaid papers. Accordingly, the papers were scratched and no marks were allotted to the students. It is averred that in a case of this nature, where a large number of students were involved, it was

impossible to take recourse to the principle of natural justice and hear each and every student before taking the final action. In order to preserve the sanctity of the examination, the step taken was absolutely necessary and is unexceptionable. Therefore, the question of evaluation of the answer papers of the Petitioners does not arise.

5. Mr. J.P. Misra, learned Counsel appearing for the Petitioners strenuously urged that the Petitioners did not take resort to any malpractice and there is no proof that they had done so, particularly when Petitioner Santanu answered the English papers from the sick room. The report of the squad of supervisor was not available to them so that they could meet the charges against him, if any. In such circumstances, there, was gross violation of the principle of natural justice. Mr. R.K. Mohapatra, learned Counsel appearing for the opposite parties, on the other hand contended that in a case of mass copying, it is impossible to bring charges against each and every examinee, give them personal hearing and then arrive at a conclusion. In order to maintain the purity and sanctity of the examination, the Examination Committee is clothed with jurisdiction to cancel examinations. In that process some innocent students who may have been the Petitioners are bound to suffer, but that cannot be helped.

6. According to Section 21 of the Orissa Higher Secondary Education Act, 1982 (Orissa Act 19 of 1982), the Council shall have committees, one of which is the Examination Committee. According to Section 30, the Council may also frame resolutions inter alia with regard to powers and duties of the committees specified in Section 21. Regulation 77 of the Orissa Higher Secondary Education Regulations, 1982 lays down the powers of the Examination Committee. Clause (vii) thereof provides that the Examination Committee will consider cases of malpractice and award punishment to candidates concerned. According to Mr. Misra, the above clause does not authorise the Examination Committee to scratch answer papers of students in examinations. But Mr. Mohapatra interpreted this clause and stated that it confers very wide powers on the Examination Committee so as to take in its sweep cancellation of examinations and scratching of answer papers in consideration of general malpractice which tantamount to awarding punishment to the examinees. In consideration of the general indiscipline where it has become a fashion to take resort to malpractice by a large number of examinees so as to secure an easy pass in the examinations, no other interpretation than given by Mr. Mohapatra is possible. We are, therefore, of the view that Clause (vii) of Regulation 77 empowers the Examination Committee to award punishment to students adopting unfair means in examinations conducted by the Council of Higher Secondary Education by canceling examinations and scratching answer papers.

7. Why does such a contingency arise and who is responsible is it possible in such case to adhere to the salutary principle of nature justice? The answer is not far to seek. The examination centre authorities and the invigilator have been rendered helpless, often for fear of unruly and antisocial examinees whose tribe

is not in the decrease. They remain helpless spectators during examinations and do not venture to catch a culprit for obvious reasons. If a sincere, honest and brave invigilator ever makes attempt to catch an examinee taking resort to malpractice and report against him, he is in serious trouble. The examining authorities are aware of such situation and it has become impossible for them to take in hard individually cases of malpractice. In such situations, mass scratching of examination papers cannot be resisted and in such an event, it is impossible to give opportunity to each and every examinee so as to apply the principle of natural justice. In given cases such as this it would be illogical in the context to argue about the violation thereof. It is true and we understand that many innocent examinees suffer in this process and may be these two Petitioners are amongst them, but it cannot be helped. So a time has now come when the students themselves should come forward to prevent malpractice in examination centre so as to safeguard their own interest so that none of them should suffer.

8. In this connection, three decisions cited at the Bar should be noticed. In *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, *The Bihar School Examination Board v. Subhas Chandra Sinha and Ors.* the facts were that in the Bihar Secondary Schools Examination held in March 1969, the results of Hanswadih Centre was cancelled on account of the examinees adopting unfair means. In that context, it was held as follows:

This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging anyone individual with unfair means but to condemn the examination as ineffective for the purpose it was held, must the Board give an opportunity to all the candidates to represent their case? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being canceled. The Board had not charged anyone with unfair means so that he could claim to defend himself. The Examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go.

It was further held:

...The universities are responsible for their standards and the conduct of examinations. The essence of the examinations is that the worth of every person appraised without any assistance from an outside source. If at a centre the whole body of students receive assistance and manage to secure success in the neighborhood of 100% when others at other centers are successful only at an average of 50%, it is obvious that the university or the Board must do something in the matter. It cannot hold a detailed quasi-judicial inquiry with a right to its aluminum plead and lead evidence etc. before the results are withheld or the examinations cancelled. If there is sufficient material on which it can be

demonstrated that the university was right in its conclusion that the examinations ought to be cancelled then academic standards require that the university's appreciation of the problem must be respected. It would not do for the Court to say that you should have examined all the candidates or even their representative with a view to ascertaining whether they had received assistance or not. To do this would encourage indiscipline if not also perjury.

In *Rajiv Ratna Shukla and Another Vs. University of Allahabad and Others*, a Division Bench held:

Mass copying has not been defined in the Act of the Statute framed under the University Act. It has therefore, to be understood in its common parlance. What could be considered mass copying cannot be laid down with mathematical precision. It has to vary and has to be decided on circumstances. It may be copying by a vast majority or on a massive scale or in such large proportion that it was not possible to check it.

It was further held:

As regards demand for enquiry and violation of principle of natural justice, suffice it to say, that on academic disciplinary proceedings exception is made where proceedings are substantially fair or it is impossible to hold inquiry. Cases of mass copying resulting in cancellation of the examination fall in this exception. By its very nature no inquiry could have been made.

In a recent decision of this Court reported in *Raja Mohapatra and Others etc. Vs. Board of Secondary Education, Orissa and Another*, dealing with cancellation of Annual High School Certificate Examination, 1987 conducted by the Board of Secondary Education, Orissa, in a few centers Division Bench examined in detail different aspects and observed:

It is the unwritten rule of any examination that it must be conducted fairly which would include the concept that examinees must take the examination fairly. Adoption of unfair practice either individually or as mass is the antithesis of the fairness of the examination and even in the absence of any specific rule for the purpose, the examining body would have the power not to accept the result of the examination and take action either against the individual or against all the examinees as a whole in case of mass involvement in unfair means. The rule is implicit in all examinations and hence the Board or the Committee would be within its right to scratch the examination if such rule is violated.

It was further observed:

...However, even apart from the rules it must be held that the power to cancel the examination on such account is inherent in the Board and does not wait for the framing of the rules, which if at all framed, would be merely for the purpose of elucidation and not for the purpose of assumption of power.

It is clear from the principles laid down in the above decisions that if the

examinees of a particular centre adopt unfair means in the examination and resort to mass copying, scratching of the examination papers or cancellation of the examination by the examining authorities is unexceptionable and in such cases, application of the principle of natural justice in respect of each examinee is not a relevant consideration. Judged by this standard, we do not find any irregularity or illegality of opposite party No. 1 in scratching the answer papers of all the examinees including those of the Petitioners of the centre of panchayat College, Bargarh, in respect of English (Paper I), Economics (Paper II) and Physics (Papers I and II). We, however, express our regret that in this process innocent and good students have suffered. This is a matter to be pondered over by the students as a whole so that they will desist from taking recourse to unfair means, act with discipline and keep up the sanctity of the examinations, for which they themselves will be the gainers and prosper in their lives. We depart from the case with this fond hope.

8. For the above reasons, the writ Petitions are dismissed. There is no order as to costs.

A.K. Padhi, J.

9. I agree.

Writ petitions dismissed.