
(2003) 12 OHC CK 0035

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1663 of 2002

Chandan Kumar Dey

APPELLANT

Vs

Controller of Examinations, Utkal University

RESPONDENT

Date of Decision : 10-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2004) 97 CLT 78 : (2004) 1 OLR 158

Hon'ble Judges : P.K. Mohanty, J;P.K. Misra, J

Bench : Division Bench

Advocate : S.S. Das, P.K. Nayak and K.C. Khuntia, for the Appellant; S.K. Patri and S.K. Dash, for the Respondent

Final Decision : Allowed

Judgement

P. K. Mohanty, J.—The petitioner calls in question the decision of the opp party-Utkal University in cancelling the result in Paper-VI of M. A. (English) Examination, 1999 for Non-Collegiate private candidates conducted in Rural Institute of Higher Studies, Bhograi centre.

2. The petitioner's case in brief is that he appeared at the M. A. Examination in English as a private Non-Collegiate candidate under Utkal University in the year 1998 and had only passed in three papers out of eight for which he repeated the rest five papers in the next examination of the year 1999 and took the examination in the Rural Institute of Higher Studies, Bh'ograi centre. The petitioner asserts that when the results were published, he found that the marks he secured in Paper-VI in the year 1998 have been reflected in his mark sheet and on enquiry learnt that the result in paper-VI of the 1999 examination was not taken into account since it was cancelled because of mass malpractice in the centre. The petitioner said to have made a representation, but received no response from the University. Hence the present writ application.

3. The opp. party-University has filed a counter affidavit denying the claim made

stating inter alia that the examination in respect of M.A. Paper-VI of the petitioner for the year 1999 has been cancelled for mass malpractice along with other examinees appearing in the said centre. It is stated that the petitioner's mark in Paper-VI having made "00" because of cancellation of the examination, the mark he had secured in that paper in the previous year was taken into account and as such it was reflected in the mark sheet supplied to him, since 1999 examination was a repeat examination for the petitioner. It is stated that the petitioner had appeared at the M.A. (English) examination, 1998 as a Non-Collegiate private candidate through the College of Teacher Education, Balasore centre and had passed the examination in Third Class securing 367 marks and, therefore, in the year 1999 he repeated Papers-1, II, V, VII and VIII and appeared at the examination through the Rural Institute of Higher Studies, Bhograi centre. The examinations conducted in Papers-IV and VI of the centre were cancelled due to mass malpractice by notification dated 3.8.2000 a copy of which is Annexure-R/1. It is the specific case of the University that the papers were cancelled on the basis of the report of the Supervisors deputed by the University to oversee the conduct of examination since according to the reports the examination was not conducted in accordance with the Rules and the examinees had adopted mass malpractice. The petitioner who repeated Paper-VI, therefore, was to be awarded "00" marks and since the earlier mark was available, the said marks were reflected in the mark sheet.

4. In order to satisfy ourselves, we called for the report of the Supervisors deputed for over-seeing the conduct of examination in the concerned centre and Sri Patri, learned counsel for the University has produced the same for our perusal. The report reveals and it has been specifically mentioned in the report that the Invigilators were not in motion and were sitting or standing and watching the observers. Notes etc. were found in the verandah and the holes of the walls. In the prescribed proforma of report at Clause-E with regard to observance of Examination Rules :

(1) Whether candidates were trying to help each other to use incriminating materials :

The answer has been given as "No".

(2) Whether there was any attempt for bringing in outside assistance :

The answer had been "No" and thereafter had been said "Yes" after scoring out "No".

(3) Whether incriminating materials were found scattered in the examination hall and/or verandah :

The answer is "Not inside hall, but within premises like urinal & walls.

(4) Instances of unfair means detected by the supervisors. The cases detected with full particulars including time of detection should be reported in the proforma prescribed for the purpose, available with the Centre Superintendent:

xx xx xx (5) Instances of misconduct : ,

(i) Assault or threat of assault on Invigilators/Centre Superintendent/ Supervisors :

No, but threat to Supervisors by outsiders.

(ii) Leaving Examination hall without permission

(a) Temporary for long period - X

(b) Permanently- X

(iii) Misbehaving with the Invigilator/Centre Superintendent/ Supervisor - X

(iv) Causing disturbance to other candidates in the hall-X

(v) Adopting unfair means outside the hall during the period of temporary absence from the hall :

Yes-when going to urinal trying to see points etc.

(vi) Misbehaving with Invigilator/ Supervisors outside the hall after or before the period of examination :

A full report on each case of misconduct should be given : X

(6) Whether persons unconnected with the examination were found present inside the examination premises and if so, details about them should be stated :

Yes. Members of the teaching staff.

(a) Categories of persons unconnected - X

(b) Their activities- X

(7) General condition and atmosphere that prevailed inside and/or outside the examination premises :

Not congenial inside examination hall.

(8) Whether police assistance was availed adequately whenever necessary- No

(9) Recommendations if any, regarding general disciplinary measures to be taken against the centre :

There should not be examination centre like P.G. where invigilators were silent observers & activities was nil. The invigilators rather were watchful to observer than candidates.

The report nowhere specifically said that the examinees in the centre on those two particular dates were adopting mass scale malpractice or the situation in the centre was so chaotic that no free and fair examination could be conducted.

5. It is the settled principle of law that if the examining bodies like Universities of

Secondary Boards on the basis of materials came to a conclusion that on examination or examinations in any centre of examination has not been conducted in accordance with the norms prescribed by it, the examinees have resorted to a large scale/mass scale malpractice and taken external aids in answering the questions or that the situation in the examination halls were so chaotic that no examination could be conducted in a free and fair manner, the examining bodies may be justified in cancelling or annulling such an examination, in order to maintain the standard of education and its worth. In case of such cancellation of examination due to mass scale malpractice, there may be a small fraction of students who might have not adopted the unfair means, but since they cannot be segregated and distinguished in the prevailing situations, have to suffer in the process, which cannot be helped but that should be the reason and should weigh heavily on the examining authorities to make sure and be fully satisfied that the examination has not been conducted in the manner it should be and the examinees have resorted to and adopted mass scale malpractice before such examining authorities take the drastic steps of cancelling and or annulling such examinations.

6. The report of the supervisors of the concerned examination as discussed earlier in details, does not confirm to the condition precedent for cancellation of an examination. The report in specific terms does not speak "of adoption of mass scale malpractice by the vast majority of examinees of the centre, what it speaks of is some of them while going to urinals were trying to see points from the books/notes kept in urinals. All the examinees were not going to the urinal at a time and if and when an examinee was found trying to look at the book in urinal, he could be caught and booked individually for malpractice. Nothing prevented the observers from reporting such cases for appropriate action by the University. The report in terms also nowhere discloses if the examinees were taking external aid from any sources or incriminating materials to write the answer. The Supervisors also have not recommended the case for cancellation of the examination, but advised the University not to have such centres of M.A, Examination in general. On the basis of such a report, the Examination Discipline Committee of the University could not have taken a decision to cancel the examination in Paper-VI of M.A. (English) Non-Collegiate Private candidates appearing from Rural Institute of Higher Studies, Bhograi in the district of Balasore. The decision of the Examination Discipline Committee as well as of the University is thus an outcome of non-application of mind and a casual approach to the matter. The academic bodies like University should consider the reports with circumspection and only on proper scrutiny, if it feels appropriate and reasonable that there are sufficient materials to show that the examination has not been conducted in accordance with the norms prescribed by it and that mass scale malpractice has been adopted by the examinees, then and then only should take the drastic steps of cancelling an examination. It appears that the University authorities in the present case has taken the matter in a casual manner and without proper scrutiny have decided to cancel the Paper-VI. No reasonable

person or body of person, specially the academic body like Examination Discipline Committee of the University could have on the basis of the aforesaid report of the Supervisors to come to a conclusion that the examinees of the Rural Institute of Higher Studies, Bhograi centre have adopted mass scale malpractice in Paper-VI of M.A. examination in English for Non-Collegiate private candidates, necessitating cancellation of the entire centre.

7. In such view of the matter, we quash the decision of the University in cancelling paper-VI of M.A. (English) examination of the private Non-Collegiate candidates, appearing from the Rural Institute of Higher Studies, Bhograi held on 23.1.2000. The result of the candidates who took the examination on 23.1.2000 and 6.2.2000 in the said centre be revised and published forthwith taking into account the marks secured in those papers held on 23.1.2000 and 6.2.2000.

In the result the writ application is allowed with a cost of Rs. 1,000.00 (Rupees one thousand only).

P.K. Misra, J.

8. I agree.