

(1987) 12 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 3494 of 1986

Debadutta Singh Deo and Others

APPELLANT

Vs

Berhampur University and Another

RESPONDENT

Date of Decision : 15-12-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1988 Ori 156

Hon'ble Judges : P.C. Misra, J; D.P. Mohapatra, J

Bench : Division Bench

Advocate : S.C. Dash, for the Appellant; R. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—Some of the students of the Sanjay Memorial Institute of Technology, Ankushpur (shortly referred to as the "S.M.I.T.") affiliated to the Berhampur University have filed this application under Article 226 of the Constitution of India challenging the notification dated 28th February, 1986 issued by the Controller of Examinations of Berhampur University, as per Annexure-1, cancelling the M.B.A. Part II Examination on the ground that there has been extensive and wide spread malpractice including mass copying of the scripts in various papers and unfair practice in the preparation of the dissertation of the said Examination. The notification purports to have been issued by order of the Administrator, opposite party No. 2.

2. The M.B.A., Part II Examination, 1985, was held between 17-4-86 and 4-6-86. As the programme of the Examination as per Annexure-3 indicates, the examinees had to appear in ten different papers, one paper a day, at the Post-graduate Centre for Management Studies. The dissertation for the examination were to be submitted by 25-7-1986. On approval of the thesis of the candidates the viva voce test on the dissertation was to be held by the Examiners who evaluated the thesis. The viva voce examinations were held on 16-9-86, 22-9-86 and 23-9-86. When the theory papers of the examinees were evaluated by the

Examiners, some adverse reports were received from them. The Board of Conducting Examiners appointed under the University Statute passed the results and sent it to the Administrator in whom was bestowed the powers of the Syndicate for approving the results and publishing the same. The Administrator instead of publishing the results sent it back to the Board for reconsideration on the ground that due weightage had not been given by the Board to the reports submitted by the Examiners. The Board met again on 24th and 26th of November, 1986 and on reconsideration of the matter accepted the allegations contained in the reports of the Examiners that there was mass copying by the examinees. On consideration of the reports of the Board the Administrator cancelled the results of the University which decision was notified on 28-11-86.

3. The aforementioned decision of the Administrator is challenged by the petitioners mainly on the grounds that the allegations are vague and general in nature; that the reports of the Examiners even accepting all the statements contained therein to be true do not make out a case of extensive malpractice or mass copying in all the papers and the dissertations as held by the Administrator; and that the decision of the Administrator is motivated since some of the teaching staff in the University who were interested in opening M.B.A. class in the University tried to tarnish the name of the petitioners' institution for that purpose. It was also contended on behalf of the petitioners that the Board of Conducting Examiners did not apply its mind properly while endorsing the views expressed in the reports of the Examiners.

4. The aforesaid submissions were reiterated by the learned counsel for the petitioners in course of his argument. The learned counsel emphasized that by taking the drastic measure of cancelling the entire M.B.A., Part II Examination, 1985, the authorities have marred the career of 193 students without duly and properly applying their mind to the facts and circumstances of the case.

The learned counsel for the opposite parties refuting the contentions raised on behalf of the petitioners urged that the decision to cancel the Examination has been taken after careful consideration of all relevant materials on record. According to him, such drastic measure was felt necessary in order to maintain high standard of education in the Institution and sanctity of teaching in the University. It was further contended by the learned counsel that the power of the Court in matters relating to academic life in University, particularly the Examinations, is extremely limited. Within the restricted parameters of its power, no case has been made out by the petitioners to warrant interference by the Court in exercise of its writ jurisdiction. The learned counsel for both parties placed reliance on authorities in support of their respective contentions.

5. The position is well-settled that the problem of adoption of unfair means which educational institutions very often face these days is a serious problem and unless there is justification to do so, courts should be slow to interfere with decisions of the domestic Tribunal appointed by educational bodies like the Universities. In dealing with the validity of the orders passed by the Universities

under Article 226 of the Constitution, the High Court is not sitting in appeal over the decision in question; and its jurisdiction is limited. But in case the impugned order is not supported by any evidence at all, the Court would be justified to quash that order. The conclusion that the impugned order is not supported by any evidence has to be reached after considering the question as to whether the probabilities and circumstantial evidence do not justify the said conclusion. Considering the case of mass copying in the case of *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, the Supreme Court held that where the Bihar School Examination Board on being satisfied that a vast majority of the examinees at a particular centre have adopted unfair means, it, is not necessary for the Board, before cancelling the examination as a whole at that centre, to give an opportunity to all the candidates to represent their cases. The Board had not charged any one 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 such circumstances the Court held that it would be wrong to insist that the Board must hold a detailed enquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The Court upheld the decision of the Board cancelling the entire examination at the centre in question.

The Allahabad High Court in the case of *Rajiv Ratna Shukla v. University of Allahabad*, AIR 1987 All 208, observed that what could be considered a case of 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. In that case there was the report of the flying squad that no effective checking was done at the gates of examination centres and not only large number of notes and books were found outside the examination hall but they had seen notes and books lying in every room on their arrival. The fact that only few examinees were detected on checking was held to be immaterial, and it was found that the conduct of examination in general was not fair and the atmosphere was such that holding of fair and proper examination stood ruled out. The Court further held that while taking a decision to hold re-examination on finding of mass copying, it was not necessary to follow the principle of natural justice.

6. Now let me examine the present case in the light of principles discussed in the foregoing paragraphs. Here there was no detection of malpractice by the examinees individual or in general at the centre when the examinations were being held. No report to this effect was also received from the invigilators or the Centre Superintendent. It appears from the records submitted before us by the learned counsel for the opposite parties that it was revealed in the report submitted by the Examiners that "It seems like mass copying since many answers are tallying totally. Many questions have not been answered by even a single student. While examining the candidates it is found that most of the reports are identical". In Marking Dissertation paper the Examiner's report was that the examinees having Roll Nos. 3, 4, 8, 10, 17 18, 20, 27. 32, 54, 64 and

65 appear to have taken recourse to malpractices either by copying from each others dissertations or by copying from the dissertations of the previous batches of examinees. The details of the malpractice by these examinees have been set out in the report of the Examiner. It appears from another report of the Examiner in Dissertations Paper XVII that Roll No. 23 had copied some information from Roll No. 50 and Roll Nos. 66 and 28 have submitted identical information in most of the chapters. From the order of the Administrator passed on 21-11-86 it appears that the decision to remit the matter to the Board of Conducting Examiners for reconsideration of the results was passed on the following facts :

"(1) the examiner who had valued the marking dissertations has specifically mentioned that Roll Nos. 3, 4, 10, 8, 17, 18, 20, 27, 32, 54, 64 and 65 had copied from the dissertations of the previous batches of the examinees.

(ii) Roll No. 4 and Roll No. 54 are identical from the beginning to end.

(iii) The dissertations of Roll No. 3 and Roll No. 17 are almost identical with minor variations.

(iv) The dissertation of Roll No. 10 is copied from a previous dissertation details of which he has given.

(v) Dissertations of Roll No. 18 and Roll No. 65 seem to be identical.

(vi) Dissertation of Roll No. 64 seems to be a copy of an earlier dissertation of 1984.

(vii) Dissertations of Roll Nos. 32 and 8 are almost identical. The Conducting Board of Examiners, however, have not given any indication that they have considered these remarks of the examiners.

2. Another examiner for dissertation has commented on Roll Nos. 23 and 50 copying the same one from the other. He has also observed that Roll Nos. 66 and 28 also seems to have copied identical in- most of the chapters. On this question also, I do not find any comments of the Board of Conducting Examiners.

3. The examiner in Industrial Relations special Paper II has made certain comments about scripts being textual and bearing little testimony of the candidates' ability to understand and assimilate. The Board of Conducting Examiners had not taken this remarks into consideration.

4. The examiner for Paper XIV in MIS and EDP has commented in mass-copying which seems to have resorted to in many papers which tally totally with one another. The Board of Conducting Examiners have not taken a view on this report."

When the Board met again to re-consider the matter, it decided to pick up some scripts at random, that is about one-third of the total examined scripts and on close scrutiny of the same arrived at the following conclusions :

"(i) Irrelevant things were written by almost all so far as the practical aspects of

MIS and EDP are concerned.

(ii) It is quite clear from the sample that each one has tried to copy same portions of the answers from other."

Here the Board stated that it examined the sample scripts of Roll Nos. 3, 4, 6, 7, 8, 9, 10, 17, 18, 25, 28, 29, 30, 31, 32, 33, 34, 35 and 36. The striking fact found by the Board was that the similarity was complete. On these findings the Board accepted the views expressed by the Examiners that there was mass copying in the papers. One striking feature in the observations in the reports of the Examiners and also the Board of Conducting Examiners was that the finding relate to dissertation paper only. Even though Shri R. Mohanty, learned counsel for the opposite parties, filed a statement indicating that a vast majority of students copied in more than one paper, no material whatsoever was brought to our notice in support of such statement. No such finding appears to have been arrived at by the Board of Conducting Examiners. It is also not clear from the materials produced before us if these statements had been prepared and had been placed before the Administrator when he took the impugned decision to cancel the entire Examination. Allegation of mass copying, as discussed earlier, is a serious allegation. The decision to cancel the entire examination at a particular Centre is equally serious and drastic. It affects the career and life of large number of students. The power of the authorities in charge of academics and administration in the University is vast and should be enjoyed by them without being unnecessarily interfered with by Courts and by other outside agencies. But it has to be remembered, larger the extent of the power more is the necessity to exercise it with care and caution. In case it is found that due care and caution has not been exercised in exercising the power and in taking the drastic measure to cancel the examination of all the examinees at a Centre, the decision will be unsustainable and has to be set aside. In the present case, as noticed earlier, all the adverse findings of the Examiners concurred with by the Board of Conducting Examiners related to the dissertation papers. The roll Nos. mentioned in the reports submitted by the Board were about twenty. On this basis to cancel the examination in all the ten theory papers as well as the dissertations of 173 examinees, in our opinion, cannot reasonably be supported even conceding the powers of the authorities to the utmost and keeping the power of interference by the Court at the minimum. If it was found that in the dissertation papers many of the examinees were found to have taken recourse to copying then the examination in that paper could have been cancelled. If some students were found to have taken recourse to copying in other papers and their number if not very large considering the total number of examinees then cancellation of the entire examination will not be justified.

7. On giving our anxious consideration to the facts and circumstances of the case and the records produced before us, we are of the view that the matter was not considered by the authorities in its proper perspective and on taking into account all relevant aspects. As such, we consider it appropriate to direct the authorities

of the University to re-consider the matter and take a final decision expeditiously.

8. In the result, the writ application is allowed and the notification as per Annexure 1 cancelling the M.B.A, Part II Examination, 1985, is quashed. The opposite parties are directed to consider the matter afresh and take a final decision within three months hence. Both parties will bear their respective costs of this proceeding.

P.C. Misra, J.

9. I agree.