

(2010) 04 OHC CK 0050
In the Orissa High Court

Deepanjali Pradhan and Another

APPELLANT

Vs

The Controller of Examinations and Another

RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 110 CLT 671 : (2010) 2 OLR 197

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.—The petitioners appeared in the Annual +2 Arts Examination, 2008 conducted by the Council of Higher Secondary Education (for short, "the C.H.S.E.") as ex-regular students from Panchayat Samiti College, Suguda. The result of the petitioners with all other ex-regular students of the said college was withheld. On enquiry, the petitioners ascertained that the Controller of Examinations, C.H.S.E. has withheld the result of the said students on the ground that the papers in History as well as extra optional subject, i.e., Economics were under reexamination by the review committee and they were given to understand that thereafter the result would be published. Ultimately, the result of such students including the petitioners was published on 25.7.2008 wherein they were declared failed. They were provided with memorandum of marks and they found that it was reflected therein that they have been awarded "O" marks in History and Economics papers even though they have secured better marks in all other subjects. All the ex-regular students of the said institution, save and except only one, were declared failed owing to award of "O" marks in the aforesaid subjects. The petitioners being aggrieved by such action of the opp.party No. 1 - Controller of Examinations, have preferred the present writ petition.

2. Mr. Das, learned Counsel for the petitioners submitted that the C.H.S.E. without assigning any reason and without affording an opportunity of hearing, has arbitrarily awarded "O" marks in the aforesaid two papers to the students of

the said college when the entire examination was conducted smoothly. There was no report of any untoward incident in or around the examination hall/centre on the relevant dates when the examinations in the aforesaid two papers were conducted. It was further submitted that the invigilator, Centre Superintendent and above all, the Flying Squad have reported regarding free and fair conducting of the examination in the centre and, therefore, in the absence of any such material, no inference can be drawn that there was mal-practice or unfair means adopted by the examinees. Under such circumstances, the students including the petitioners could not have been awarded "O" marks in the aforesaid two papers. Mr. Das further submitted that the decision of the authorities in awarding "O" marks in the aforesaid two papers are purely based on conjectures and surmises drawn from presumption without any basis.

3. A counter affidavit has been filed by the Controller of Examinations, inter alia, stating that while the result of Higher Secondary Examination, 2008 was being processed, some serious abnormalities were detected relating to certain examination centres and the results of those colleges were kept withheld for thorough examination and scrutiny. So far as the ex-regular students of the petitioner's college is concerned, such abnormalities were detected for which the result was withheld by a notification dated 9.6.2008. In relation to the Economics Paper-II, the Subject Expert after scrutinizing the answer papers gave its report on 14.7.2008 to the opp.party No. 1 - Controller of Examinations with the observation that all the candidates have thoroughly resorted to wholesale mal-practice in the sitting of examination. The report indicated that (1) all except Roll No. 437 NA009, have answered the question in Oriya language; (2) all candidates, who have answered the question in Oriya language have committed error in answering question No. 1(d) and 2(f), have answered bits a, b, e, f, g in question No. 3 in that order, have answered bits a, b, c, d, f of question No. 4 in that order, have answered the same questions from group-C, i.e., question Nos. 5, 8, 9 and 11, have taken the same assured mean in their answer to question No. 11; (3) only candidate, who answered the question in English has also subjected to the same error in regard to answer 1(d) as his counterpart, who answered in Oriya language. He answered to bits b, c, d, f and g to question No. 3 and the bits f and c to question No. 4. He also answered question Nos. 5, 8, 10 and 11 from group-C; (4) all candidates, who have answered in Oriya and English have used book language. While observing as above, the Expert Committee have strongly opined that all such candidates have adopted mass mal-practice in the sitting of the examination.

Similarly, the subject experts, who scrutinized the answer papers relating to ex-regular candidates in History Paper-I also found that there was mass mal-practice in the aforesaid centre for the reason that all the short questions were having identical answers. In answering question No. 1(b)(k), the candidates adopted identical writing. They also opined that "Sairat" is a popular term and "Quranic law" is a difficult term on the part of any average student to write. While answering question 1(i), all the students mentioned "Muinidin Chisti" while

it will be "Khwaja Moinddin Chisti". All the answers are uniform which suggest that they copied from particular sources.

The further case of the opp.party No. 1 is that the relevant records and the reports of the above two Expert Committee were placed before the examination committee for taking decision on 19.7.2008 and the examination committee on consideration of the materials on record, resolved that the results of Arts stream of ex-regular candidates of the petitioners" College in Economics Paper-II and History Paper-I for the said examination be cancelled.

On the above facts, it was contended that no fault can be found with the Council in awarding "O" marks to the petitioners in the aforesaid two papers as the Examination Committee after due consideration of the Expert Committee reports came to the above conclusion.

4. Reliance has been placed by the opp.parties on the decision of the Supreme Court in the case of Chairman, J and K State Board of Education Vs. Feyaz Ahmed Malik and Others, and it was submitted that the Supreme Court in the aforesaid case, while examining the correctness of the judgment of the J. and K. High Court in declaring certain amendments to the existing regulations governing the cancellation of examinations on account of mass copying was declared ultra vires being contrary to Article 14 of the Constitution of India, held that while judging the authority or otherwise all steps taken by authorities of the Board to take action against candidates taking resort to mass malpractice, it should be borne in mind that the Board is entrusted with the duty of maintaining higher standards of education and proper conduct of examinations. It is an expert body consisting of persons coming from different walks of life who are engaged in or interested in the field of education and have wide experience. The decision of such an expert body should be given due weightage by Courts.

The Supreme Court in the said case relied upon its earlier decision in the case of The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, , wherein, it was observed that "the universities are responsible for their standards and the conduct of examinations. The essence of the examinations is that the worth of every person is 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 neighbourhood of 100% when others at other centres 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 alumni to 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 required 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 representatives with a view to ascertaining whether they had received assistance or not. To do this would encourage indiscipline if not also perjury".

(Emphasis supplied)

5. The report of the Examination Committee has been annexed to the counter affidavit as Annexure-B/1. In item No. 2 of the resolution of the said meeting of the Examination Committee held on 19.7.2008, the case of the ex-regular students of the petitioners' college was considered and in resolution No. 2600(2), the Committee resolved as follows:

The Committee thoroughly discussed the reports of the Subject Experts in different subjects submitted the Controller of Examinations and after careful consideration, it is resolved as follows:

(1) xx xx xx

(2) The results of Arts Ex-regular candidates of Panchayat Samiti College, Suguda (NB 11) in Economics Paper-II and History Paper-I for the Annual H.S. Examination, 2008 be cancelled.

6. Learned Counsel for the petitioner relying upon the decisions in the case of *Narmadaprava Sahu v. The Controller of Examination, Council of Higher Secondary Education, Orissa* and Anr. 2009 (I) OLR 72 and in the case of *The Controller of Examinations, Council of Higher Secondary Education Vs. Narmadaprava Sahoo and Another*, submitted that the decision of the examination committee can be termed to be a mechanical one and it does not indicate as to what materials were considered by the said committee while taking the aforesaid drastic decision of cancelling the examination in the above two papers in case of the petitioners' college. He further submitted that law as settled lays down that the examination committee cannot play with the career of the students en-mass in a whimsical manner without specifying any reason in their resolution for taking a drastic step against all the students of an institution thereby occasioning an opportunity for marring the career of genuine good students.

7. This Court in the case of *Narmadaprava Sahu* (supra) which was upheld by the Division Bench in the case of *The Controller of Examinations, Council of Higher Secondary Education, Orissa* (supra) under similar facts held that the conclusion of the examination committee was based on suspicion. The Division Bench in the case of *The Controller of Examinations, Council of Higher Secondary Education, Orissa* (supra) while upholding the said order further added that there can be no dispute over the settled proposition of law that in case of mal-practice the principles of natural justice do not apply. More so, the opinion of the Expert Committee should not be lightly interfered with by the Court even if there is no direct evidence in respect of adoption of unfair means by the students in the examination. It may also not be possible even in some cases to recover any incriminating material used for adopting the unfair means in the examination. The Division Bench also held that suspicion and expert opinion cannot be a substitute of evidence and in such fact situation, the council ought to have examined the staff on invigilation duty, i.e., teachers and peons etc. working

there, the centre Superintendent and the members of the flying squad. There should have been some evidence against the students and, therefore, the council ought to have examined as to whether there was a possibility on the part of some one to dictate the answer or write it on the Black Board. Particularly, in view of the fact that persons, who were responsible for conducting or supervising the examinations did not file any opinion whatsoever.

8. In the instant case also, there was absolutely no allegation of malpractice, far less, mass mal-practice from either any invigilator or the Centre Superintendent or by the Flying Squad. Hence, applying the ratio of the aforesaid decisions to the facts of the present case, it is inevitable to conclude that the decision taken by the C.H.S.E. for cancelling the result of the examination of the petitioners and others, who appeared as ex-regular candidates from Panchayat Samiti College, Suguda in the Annual +2 Arts Examination, 2008 in respect of History Paper-I and Economics Paper-II cannot be sustained. Accordingly, the decision of the examination committee to that effect is quashed and the writ petition is allowed directing the C.H.S.E. to declare the results of the candidates, who appeared as ex-regular students from the aforesaid college in the Annual +2 Arts Examination, 2008, by awarding them marks as have been evaluated by the examiners in the said two papers, i.e., History Paper-I and Economics Paper-II. However, in the event the said answer scripts of the ex-regular candidates have not been evaluated, the C.H.S.E. shall get the same evaluated and give the marks as awarded to the candidates and shall declare their results. The entire exercise shall be done within a period of two months from the date of communication of this order. No costs.