
(1994) 09 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Writ Petition No 1368 of 1993

Fayaz Ahmad Malik

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 29-09-1994

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1994) JKLR 125 : (1995) SriLJ 69

Hon'ble Judges : A.M.Mir, J and S.M.Rizvi, J

Bench : Division Bench

Advocate : Z.A.Shah, U.K.Jalali, R.Hussain , M.A.Bhat, I.Sofi, Advocates
appearing for the Parties

Judgement

Mir, J.—The writ petitions in hand have been filed by the examinees who appeared in Higher Secondary PartII (12th class) Examination in

its Annual Session of May/June,

1993. The said petitions have called in question Notification No. VIG(HSEII)93/KD/8 dated June 29,1993, issued by the Chairman Jammu and

Kashmir State Board of School Education, hereinafter called the Board. The impugned Notification has canceled the entire examination of 24

centers falling within the territorial jurisdiction of District Pulwama. The vires of Notification issued under No.F.20 (AcadBM)B/Jan/93 dated

January 27,1993 have also been called in question in particular so far as its paras 66(a) and 66(b) are concerned. When these petitions came up

before a Single Bench of this Court (Rizvi J), the said Bench, by virtue of its order dated April 22,

1994, has ordered that all these petitions be clubbed together and heard and disposed of simultaneously. Besides that the learned Single Judge

referred the matter to a Division Bench after formulating the following questions:

1. Whether the Chairman has passed any reasoned order after applying his mind to the facts of the case for canceling the examination?

2. Whether the principles of natural justice are applicable to the case of masscopying also requiring the concerned authorities to give an opportunity of being heard to the examinees before cancelling of examination?

3. Whether the action of Chairman suffers from the vice of malafides as amongst all the Districts where mass copying was complained of, he has cancelled the examination of Pulwama District only?

4. Whether before cancellation of examination in question, an inquiry was called for particularly so, when the supervisory staff had not complained

of the mass copying and only the Vigilance squad had reported about it?

5. Whether the Vigilance squad had complained of the mass copying from all the examination centres or only from some of them? If no complaint

was made about some examination centres whether it could be legally justified to cancel their examination also?

6. Whether there is any inconsistency between the provisions of the Jammu and Kashmir State Board of School Education Act 1975 and the

Regulations 66(a) and 66(b) with regard to cancellation of examination and, if so, which one should prevail?

7. Whether the regulations 66(a) and 66(b) are arbitrary in character for want of guidelines and the machinery for its proper enforcement? and

8. If mass copying was reported only in a particular subject, whether the examination could be cancelled as a whole and how for it is legally

justifiable?

2. The aforesaid petitions have called in question the Notification No.F20 (AcadBM)/B/Jan/93 dated 27/1/1993, on the following grounds:

i. That the Notification in question is violative of Art. 14 of the Indian Constitution;

ii. That the Notification provides for delegation of powers to an authority to which no such powers, under the scheme of the Jammu and Kashmir

State Board of School Education Act, 1975 (hereinafter called the Act) has been provided for. This delegation of power against the basic scheme

of delegation annunciated under the Act; Hi. That the Notification does not make room for any definite agency through which the information with

regard to mass copying could be communicated to the Board. It, on the other hand, while defining the term 'State Government Officers' has

selected as many as six officers upon whose information the Board can Act. These officers even included the police officers upto the rank of

Inspectors and Tehsildars of the areas concerned; iv. That the Notification does not take into consideration the cardinal principle of law relating to

the rules of natural justice as the students who are proposed to be punished by the Board have not been given any opportunity of being heard.

3. The Notification No.VIG(HSEII)93/ KD/8 dated June 29, 1993 has been issued after the earlier notification dated Jan. 27, 1993 was issued.

While the earlier notification was a piece of substantive law on the subject of mass copying the subsequent notification dated 29.6.1993 is one

which has been issued in execution of the earlier notification dated 27.1.1993. That becomes pertinent for being placed on record because the latter

notification while acting upon the notification dated 27.1.1993 has proceeded upon some information with regard to mass copying of Higher

Secondary PartII Examination of the Centers with regard to which examinations have been cancelled. The subsequent notification, as such, can

safely be termed as an offshoot of the earlier notification and both will go handinhand.

4. The petitioners have besides raising the above points for assailing the subsequent notification dated 29.6.1993 laid stress on the following points

also:

a) That the Notification is harsh and punitive in nature. It did not put the information with regard to mass copying to any scrutiny and the petitioners were not heard before passing the notification.

Therefore, cancellation of the notification is bad in law;

b) That while issuing the notification, arbitrary use of power has been made;

c) That the above notification is malafide in nature;

d) That no report with regard to mass copying having taken place has been made by the concerned staff. On the other hand they have certified that

the examination was conducted in a proper manner. Hence the discrepancy;

e) That the notification has been issued without there being any material before the Board for doing so; and

f) That while cancelling the examination of the candidates of particular centers of the Valley, these candidates have been put to hostile

discrimination because no such orders have been passed in respect of other examination centers which were similarly situated.

5. The stand taken by the respondent Board in the present case is that the Notification dated 27.1.1993 being a fool proof piece of substantive law,

the subsequent notification has been issued by the Board in exercise of its power vested in it by the Act, therefore, the question of subsequent

notification dated 19.6.1993 being arbitrary and bad in law does not arise. It was also maintained that no particulars of malafides have been

detailed out by the petitioners in their petitions and in absence of specific particulars with regard to malice, the story of malafides falls down like a

house of cards. While upholding the legality of the earlier notification, it has been maintained that the officers who are empowered to tender

information to the Board are responsible officers of the State and, therefore, while acting upon such information, no miscarriage of justice can be

said to have taken place.

6. In our opinion, after duly taking care of the question formulated by the learned Single Judge on 22.4.1994 and after taking note of the

circumstances reflected by the text of the pleadings, the following questions form the sheet anchor of this case and we have to address ourselves to

these substantial questions only because while answering these questions rest of the questions are automatically replied in substance. So far as the

plea of malice and lack of material is concerned we are inclined to turn down these grounds in the inception as no particulars of malafides have

been given. We on perusal of the record are also satisfied that there was sufficient record before the Board on which it could proceed.

The questions are as under:

1. Does the Notification dated January 27, 1993 suffer from being violative of Art. 14 of the Indian Constitution?

2. Does the Notification arm the Board with powers which are arbitrary in nature?

3. Does the Notification provide for a different agency as repository of power so far as cancellation of the examination is concerned and in doing

so, does it violate the scheme of the Act?

4. Does the Notification dated 2711993 suffer from vagueness?

5. What can be the contours of rules of natural justice in a matter like masscopying?

6. Does the Notification dated 2711993 suffer from an infirmity in so far as it lays down the source from which the information with regard to masscopying can be received?

7. Is Notification dated 2711993 vitiated, if so to what extent? Consequently, is the Notification dated June 29, 1993 bad in law?

8. What are the findings of the Court?

We have heard the learned counsel for the parties at length and have also considered the factual as well as legal position involved in the case. We

find as under:

QUESTION NOS. 1 and 2

7. The first two questions are regarding the vires of the Notification dated 2711993, its being violative of Art. 14 of the Indian Constitution, and

providing for arbitrary powers. While answering these questions we will have to consider whether there is any element of arbitrariness in the

powers vested by the Notification in the Board? Before we do that, we will have to be clear in our mind that we are, in the instant case, dealing

with an issue which has sprung up as a morbid menace and a social evil of highest order in our society. Mass copying, with over all breakdown of

law and order, has become a redeeming feature of our examination system. This Court is conscious of the consequences of this social evil. It was

in this background that a Division Bench of this Court while disposing of Letter Patent Appeal Nos. 38 and 39 on Nov. 4, 1992 had observed as

under:

We do not feel that in case we maintain the orders of the learned Single Judge this will be again putting premium to the High handedness of the

generality of examinees. There seems to be an element of eagerness with Board authorities to correct our youngsters and purge the society of the

most rabid social evil of copying. In the peculiar circumstances of these cases we are inclined to set aside the impugned orders, but at the same

time we are conscious of the fact that we have not been able to salvage out

those of the unfortunate candidates who did not indulge in copying"".

8. For judging the validity of the impugned notification dated 27/11/1993 said notification is required to be reproduced for purposes of ready reference. It reads:

It is hereby notified for information of all concerned that the existing regulations governing cancellation of a particular examination on account of mass copying, outside interference or any other reason which vitiates sanctity of the examination are amended to the extent as indicated below, with immediate effect:

66(a). Notwithstanding anything contained in these regulations the Chairman, may, on receipt of written report from Superintendent/s of examination centre/ s institution, member/s of Vigilance squad or Evaluators/s for Examination/s appointed by the Board or a report received from any autonomous State Government Officer or Officer/s of the Education Department, cancel any examination/s either partly or wholly for reasons to be recorded in writing whenever he is of the opinion that any examination conducted by the Board at any centre has been vitiated on account of mass copying by examinees or outside interference or any other reason which deprives examination/s of its sanctity; 66(b). The Chairman may also for reasons to be recorded in writing, cancel any examination/s either partly or wholly on the basis of any report or intimation from any source other than those mentioned above, including any anonymous information in case he is satisfied that the sanctity of the examination/s has been adversely effected on account of mass copying by the examinees or outside interference at any examination/s centre, or for any other reason, vitiated the process of conduct of examination/s. Provided that the Chairman shall before acting upon any such information received from any source under clause 66b above have the same verified by subject expert/officers of the Board or any authorised Government Officer or officer of the Education Department. The result of the examination/s at any such centre/ s, shall remain with held pending verification of the above information (Clause 66b) received by the Chairman and his final order thereon.

Provided further that the cancellation of any examination/s under 66(a) and 66(b) shall not prevent the Board from initiating appropriate proceedings against any student/s who may be reported to have used,

unfair means by the concerned examination staff appointed at the centers.

Provided also but subject to the foregoing proviso, the examinees of any such centre/s shall be allowed to appear in the subsequent examination/s conducted by the Board, if otherwise eligible under rules".

9. On a perusal of the text of the notification reproduced above it becomes clear that while exercising his powers in terms of clause 66(a) the

Chairman can cancel any examination, partly or wholly, on the strength of a written report received from the following agencies:

i) Superintendent of the centre; ii) Inspector;

iii) Member of Vigilance Squad, iv) Evaluator appointed by the Board; v) From any authorised State Government Officer of the Education

Department.

Under 66(a) the Chairman has to record reasons in writing whenever he formulates an opinion with respect to the factum of the examination of any

centre having been vitiated on account of mass copying, outside interference or for any other reasons.

10. Para 66(a) empowers the Chairman to cancel any examination partly or wholly on basis of any report or information from any source, other

than those mentioned in para (a) above, in case he is satisfied that the sanctity of the examination of centre has been adversely effected on account

of reasons spelt out in para (a) supra. This para makes room for exercise of the powers by the Chairman on basis of anonymous information also.

The first proviso to clause 66(b) lays down an embargo upon the Chairman of the Board by putting a condition that the allegation of mass copying

shall be got verified by subject experts or officers of the Board or any authorised Government Officer or Officer of the Education Department.

Authorised Government Officer include concerned Dy. Commissioners, Addl. Deputy Commissioners, S.D.Ms, Tehsildars and Police Officers

upto the rank of Inspector. This means that whenever the chairman receives some information under para 66(b) the verification of correctness

of that information can be had from any of these officers.

11. On making a conjoint reading of the Notification it becomes clear that while the chairman has to get the allegation of mass copying verified,

when acting under clause 66(b). There is, however, no provision of such verification in 66(a). It also become clear that the Chairman can act even

on basis of an information accorded to him by a Police Officer not below the rank of Inspector, Tehsildar, the SubDivisional Magistrate and the

Addl. Dy. Commissioner of the area concerned.

12. Art. 14 prohibits class legislation but it does not prohibit reasonable classification for the purpose of legislation. If the statute or a piece of law

takes reasonable care in classifying the person or things for legislative purposes and deals equally with all persons belonging to a welldefined class

then such classification cannot be assailed. While Art. 14 allows reasonable classification it does not insist that legislative classification should be

scientifically perfect and logical with needle point accuracy. The Board in the instant case has cancelled the examination of all the candidates

appearing from 24 centers of Pulwama District, vide impugned notification dated 29.6.1993. All the centers and all the candidates have been

treated on uniform basis. An argument was raised that [SIC] if not centre, there may be some students who might have not resorted to copying.

The Board, burdened with the onerous responsibility of conducting public examinations had to, in the first instance, locate the centers where mass

copying was resorted to, and those where it was not. If the Board claims to have taken action on basis of the explosive law and order situation in

the valley, then what were the peculiar circumstances with Pulwama District only. There are five more districts in the Valley which are wading

through a similar state of Turmoil. Why was this district only spotted for a stringent action?

13. The second limb of the same argument advanced before us, as already expressed, is that the notification dated 29.6.1993 brought into its

sweep all the candidates including those who did not belong to the clan of copying candidates and who might have worked hard to get through in

the examination. Notification dated 27.11.1993 does not infact evolve any mechanism to lend protection to such of the students who might have burnt

midnight oil to make their careers. These arguments were addressed to assail the impugned notification on the ground of arbitrariness and lack of

intelligible differentia in absence of classification.

14. The Supreme Court in AIR 1970 SC page 1269 has set the issue at rest, that where the information of examination having been vitiated by

malpractice on large scale is received, the organisation conducting examination

shall be justified in cancelling the examination of the whole centre.

So the argument of lack of classification does not come to the rescue of the petitioners.

15. In Ram Parsad Narayan Sahi and others Vs. State of Bihar and others, AIR 1953 SC 215 the proposition of law was laid down as under :

The presumption is in favour of the constitutionality. Art. 14 does not prohibit classification, it prohibits only hostile discrimination and uppression

of unequality. When classification is resorted to, the selection of the class or classes singled out for preferential or adverse treatment must not be

arbitrary but the same should rest upon rational basis having regard to the objective sought to be achieved"".

16. In the Division Bench case, Jammu and Kashmir State Board of School Education Vs Puma Devi and others, this court speaking through Mir

J. had expressed its consciousness that in that case unfortunate candidates who did not indulge in copying, could not be salvaged out from the

situation because court had no device available with it to identify them. It was in this psychological background that while upholding the action of

the respondent Board a direction was passed asking the Board to frame rules on copying, including mass copying. Till those rules would be

brought into existence the Division Bench had laid down some guidelines for dealing with the situation. While laying these guidelines the court had

taken care of all the possible safeguards which could save the future of those candidates who do not resort to copying. It was in these guidelines

that the idea of flying squads was floated. The information received by the Board was sought to be confirmed by the Board by appointing a

committee of experts.

17. The Board of School Education seems to have taken que from these guidelines while formulating the impugned notification dated 2711993

only to a limited extent. Perhaps that has landed the matter into trouble. This is so because while formulating the guidelines the Court in its wisdom

had taken care of all possible safeguards which in the eye of law were required to be met. We do admit that while enacting the notification dated

2711993 the Board was not bound to adopt these guidelines as the prospective rules on the subject because the guidelines had binding force only

upto the date when the rules were brought into existence. Thereafter they do not

have any binding force. The notification does not put the information received by the chairman in terms of clause 66(a) to any confirmatory test. The court in the earlier judgment was particular in suggesting that as far as possible the job of reporting and verifying the factum of mass copying should be left to the men belonging to the field of education. This was so because generality of officers of the Education Department is supposed to comprise of highly qualified teachers who are connected with conducting of examinations and whose information can be rated higher than that of the Officers who are nonexperts.

18. Going thought the object of the impugned legislation every body is in agreement with the laudability of the object sought to be achieved by the impugned notification. But the hundred dollar question which remains to be answered is as to whether this notification fully deals with the menace of mass copying?

19. Clause 66(b) provides for a power of cancellation of examination on receipt of information. The only condition imposed is that the chairman must record the reasons in writing. It does not provide for any sort of confirmation sought to be obtained by the chairman. The qualifications of a chairman are not laid down in the Act or regulations made thereunder. The Government appoints a man as Chairman of the Board. The

Government has no fetters on its powers to appoint any body as chairman of the Board. May be, that by precedent reputed educationists might

have been appointed as chairmen so far but where is the impediment in the power of the state to appoint a nontechnical person or a nonexpert as

chairman. If such a chairman is to act on the information of any of the officers specified in the notification the whole exercise may sometime fall

short of a legitimate attempt to accomplish the purpose of doing away with the menace of mass copying. The notification provides for a general

power of censure and indictment of student community as a whole.

20. On the analogy laid down above, we find that para 66(a) of the impugned notification dated 2711993 does not make any provision for

verification of the information of mass copying. It invests a power in the chairman of the Board which enables him to treat all the students

uniformly. The net result will be that the notification grants powers to the chairman which have the effect of punishing the student community as a

whole but cannot accomplish the object of removing the menace of copying. So on both these grounds we find the impugned notification dated 27/11/1993 to be fraught with infirmity.

21. With regard to the nature of power which the impugned notification dated 27/11/1993 invests with the chairman we have expressed ourselves

sufficiently in the observations made above. However, it will not be needless to reiterate that a power exercisable by the chairman on the

information of the officers specified in clause 66 (a) is a blanket power. In absence of verification or confirmation of information received by the

Chairman, the latter can pass any order with regard to cancellation of examination. In view of the discussion with regard to application of rule of

natural justice which shall follow, the power of chairman under clause 66(a) is arbitrary. A decision taken by the Board may not be arbitrary if the

information with regard to mass copying is confirmed or verified by the experts who are competent to do so. In para 66(a) as already expressed,

the chairman has a power to cancel examination of a centre without putting the information received by him to any further test. This in practice

means that any of the officers specified in the notification can transmit the information of mass copying and the chairman can, while acting upon the

same, cancel the examination of any centre. We are today going to condition our concept of application of rules of natural justice to the view taken

in AIR 1970 SC 1269. In that view of the matter the examinees are left with no opportunity to disprove the allegation. In case information received

by the chairman in terms of 66(a) is not put to scrutiny by evolving any machinery to do so then power exercisable under this clause reflects

arbitrariness.

22. In *Manak Lal Chottalal and others Vs. M.G. Makwana and others*, AIR 1967 SC 1373 their lordships laid down the dictum that

reasonableness of a restriction shall be tested both from substantive and procedural aspects. If an uncontrolled or unguided power is conferred

without any reasonable or proper standards, the statute may well be challenged on basis of its being discriminatory. In our opinion para 66(a) does

not lay down any standards for verification of the allegation of mass copying or malpractice. Therefore, the power conferred by this provision is

arbitrary.

23. In so far as para 66(a) is concerned we do not find any element of arbitrariness because that information is susceptible to scrutiny. However, we would like to keep on record that the information received through anonymous sources should always be put to the highest degree of scrutiny so that abuse of this power is ruled out.

QUESTION NO. 3;

24. The challenge of the petitioners to the notification is predominantly based upon its mode of delegation of powers. Impugned notification dated

27/11/1993 delegates powers of cancellation of examination to the chairman. The Act evolves a machinery of formation of different committees and

delegates power of cancellation of examination to an examination committee formulated in terms of Sec. 24(c) read with Chapter V of the

Regulations. The argument advanced on behalf of the petitioners is that the delegation of power in the impugned notification is *dehors* the scheme

of delegations envisaged in the Act. The maxim *delegatus non potest delegare* is an acknowledged principle of law and cannot be lost sight of.

This argument has attracted us also. Mr. Jalali, AAG, has drawn our attention to the emergency powers of the chairman contemplated in sec.

13(4) of the Act. According to him in addition to the powers exercisable by a Examination Committee, the chairman has sufficient powers of rising

to an occasion arising out of emergency. He wanted to convince us that one of such power, could be that of cancellation of an examination also

and, therefore, no fault can be found with the impugned notification on the ground of delegation of powers to the chairman.

25. We have considered this argument. We could not agree with Mr. Jalali because of the following reasons:

a) That power of cancellation of examination has expressly been vested with the Board which can exercise the same through its Examination

Committee. The only object of this power being exercisable by a corporate body is to rule out the possibility of subjectivity which in case of a

single individual may vitiate a decision. Examination Committee is to comprise of a number of experts who join their heads in taking a decision with

respect to a matter relating to cancellation of an examination. The legislature was at the time of enacting the statute conscious of the possibility of a

single individual's decision being capable of resulting into abuse of power and

that of a corporate body being more objective and reasonable. So far as emergency powers are concerned those are residuary powers exercisable by the chairman. Sec. 13(4) relates to those powers which are not provided for in the statute. In other words a power expressly provided for in the statute cannot be read to be existent in a residuary provision like sec. 13(4) which deals with emergency powers of the chairman. Because if that view is taken then same power will have to be deemed to be exercisable by the chairman as well as the examination committee. If that is presumed this will amount to legislative de-hierarchy and sections 10 and 13 will have to be presumed to be conflicting with each other. That in our opinion can never be the intention of the statute.

b) The word 'Emergency' relates to instantaneous upspringing of a situation and a sudden state of danger requiring immediate action. The word

'Emergency' has been used in some other statutes also. In those cases too, same meaning seems to have been assigned to the word 'Emergency'.

The question determinable here will be as to whether the menace of mass copying which has been eating into vitals of our society for years together

can be said to be that of an emergency? The candidates are reported to be resorting to this social evil for years. Respondent Board has been taking

decisions with respect to that. Bouts of litigation have been witnessed by law courts. This court much earlier felt the need of bringing in legislation

on the subject. Law in the form of impugned notification has been enacted and still learned counsel for the respondents holds it to be a matter of

emergency. We do not agree to this interpretation of the word 'Emergency' and we hold that the chairman's emergency powers do not include one

for cancellation of examination.

26. Reverting back to the question of delegative legislation being inconsistent with the Act, we may place on record that administrative legislation

is traditionally looked upon as necessary evil. Necessary because law making power is given to the administrative body which do not have much of

legislative experience Necessary because, we cannot do without them and they are indispensable for meeting a situation that arises on the

crossroads of administration. For the purpose of judicial control and statutory interpretation, administrative legislation, like an administrative action,

has to pass through certain well defined tests. In other words when the court

comes to determine the validity of an administrative legislation like the one in hand it has, as in case of scrutinising an administrative action, to satisfy itself that the administrative legislation is not brought out against the very spirit of the Act. Every notification has to conform to the Act. The notification impugned in this petition has, therefore, to confine itself to the pitch and substance of the parent Act. May it be placed on record that the notification and orders under common law could be passed only to devise infrastructure and procedure for executing the policy laid down in the Act. However, in this case exercise of enacting notification has been undertaken under the very instructions of this court, and moreover, for the prevailing circumstances of the State we do not propose to touch the validity of the notification on basis of jurisdiction. We do, however, find that the notification impugned dated 27/11/1993, which is purely a piece of administrative and subordinate legislation, delegates power of cancellation of examination to the Chairman, whereas the Act delegates the same power to the Board. We in law find an infirmity in the notification on that score.

QUESTION NO. 4:

27.. As far question of the impugned notification dated 27/11/1993 being vague is concerned, we do find an element of vagueness in its first proviso. The Chairman under this proviso can act on some information other than the source indicated in the notification . He has to get the information verified by some officers including the 'authorised Government officers'. In our opinion the officers designated as authorised State Govt. officers make a long list. Inclusion of officers in terms of subparas (c) to (f) of clause (v) of definitions makes the system of inquiry vague.

QUESTION NO. 5;

28. The most important question raised in this petition is as to what is the scope of rules of natural justice in a case relating to mass copying. We may in the first instance note that the term 'mass copying' has not been defined so far. Various courts of law while dealing with cases relating to mass copying have also not given the definition of the term. Malpractice on mass basis or mass copying is a situation which the courts presume could have existed when reports of majority of students having resorted to copying is received and authenticated. The Division Bench of Orissa

High Court in AIR 1982 Orissa 266 held that where percentage of result lends assurance of mass copying having been resorted to and unfair

means having been practiced on extensive scale it is a case of mass copying. The Court on the facts of that case came to a finding that copying

material was supplied to the examinees on large scale basis. However, in Orissa case report of mass copying was made by the Superintendent of

the Centre and the Supervisors

29. In AIR 1993 Orissa 81a Division Bench of Orissa High Court did not agree with the allegation of malpractice by the examinees when report of

the flying squad deputed to visit the hall established that only one candidate was found to be in possession of some material. As such the Orissa

High Court held the decision of the authorities cancelling examination to be bad in law.

30. Allahbad High Court in AIR 1987 Allahbad 208 held that "mass copying" could not be defined with mathematical precision. It can vary and

has to be decided on circumstances of each case. It may be copying by a vast majority at a massive scale or in such large proportion that it was

not possible to check it. It was, however, held that where flying squad reported that no effective checking was done at the gates of examination

centers and in addition, a large number of note books and notes were found outside the examination hall, such material was, found in every room

on their arrival. According to the finding, conduct of examinations in general was not fair and atmosphere was vitiated to the extent that holding of

fair and proper examination stood ruled out.

31. The Supreme Court in 1970 SC 1269 found the whole body of students having received assistance and having managed to secure success in

the neighbourhood of 100% marks when others at other centers were found to be successful only at an average of 50%. Thus it came to the

conclusion that mass copying had been resorted to.

32. In all the above judgments we noted that there were definite reports received from agencies appointed by the organisation conducting the

examination. In the present case we do not have any information as to what is the percentage of examinees who have resorted to mass copying.

We also do not know what is the pattern of the answers given by them to different questions asked in the question papers. Above all, unlike the

above reported case, the information received by the Chairman has not been subjected to any verification. Therefore, we are grouping in the dark so far factual matrix of this question is concerned.

33. After the observations made in respect of this question we go to the basic question regarding the applicability of rules of natural justice to the

cases of mass copying like the one in hand. Mr. Z. A. Shah appearing on behalf of the petitioners has traced out the history of application of rules

of natural justice from A.K. Kripak's case, reported in AIR 1970 SC 150. The highest court of the country in that case had held that the dividing

line between the administrative power and quasijudicial power is gradually retreating and thinning away. Rules of natural justice were held to be

applicable to those of the orders also which were administrative in nature. We agree that the concept has all along been adopted and the ratio

complied with even in cases relating to administrative actions. We, however, find the nature of cases involved in the petitions before us to be a

different nature. If rules of natural justice are made applicable to the orders which are passed by the concerned organisation for cancelling public

examination on the grounds of mass copying or malpractice on mass scale basis then it means that every candidate will have to be heard. If that is

allowed this makes the whole exercise practically incapable of being undertaken. This is so because these organisations will have to get engaged in

conducting these inquiries rather than discharging their legitimate duty of conducting public examinations.

34. This point came up for consideration before the Apex Court in AIR 1970SC1269. The court while reversing the judgment of Patna High

Court held that in a case of Malpractice on a large scale there was no need for giving an opportunity of being heard to all the candidates. The

Supreme Court proceeded on the premise that Board had not charged any particular candidate with unfair means so that he could claim to defend

himself. The examination was vitiated by adoption of unfair means of mass scale. In these circumstances it would be wrong to insist that the Board

must hold a valid inquiry into the matter and examine each individual case to satisfy itself as to which of the candidate has not adopted unfair

means. The examination so held was cancelled. The court further held that to make such decision dependent upon fullfledged inquiry would hold up

the functioning of Universities and Boards. If at a centre whole body of students received assistance and managed to secure success, then the

Board was justified in holding that mass copying had been resorted to.

35. The Supreme Court while dealing with this case has also taken into consideration one of its earlier judgments delivered in Ghanishamdas

Gupta's case, AIR 1962 SC 1110. While reflecting upon its earlier decision the Court in para 14 held as under:

14. Reliance was placed upon Ghanshamdas Gupta's case, 1962 Supp 3 SCR 36=(AIR 1962 Sc 1110) to which we referred earlier. There the

examination results of three candidates were cancelled and this court held that they should have received an opportunity of explaining their conduct.

It was also said that even if inquiry involved a large number of persons the committee should frame proper regulations for the conduct of such

inquiries but not deny the opportunity. We do not think that the case has any application . Surely it was not intended that where the examination as

a whole was vitiated, say by some of the answer books or by discovery of unfair means practiced on a vast scale that an inquiry would be made

giving a chance to every one appearing at that examination to have his say. What the Court intended to lay down was that if any particular person

was to be proceeded against, he must have a proper chance to defend himself and this did not obviate the necessity of giving an opportunity even

though the number of persons proceeded against was large. The Court was then not considering the right of an examining body to cancel its own

examination when it was satisfied that the examination was not properly conducted or that in the conduct of examination the majority of the

examinees had not conducted themselves as they should have. To make such decisions depend upon a fullfledged judicial inquiry would hold up

the functioning of such autonomous bodies as Universities and school Board. While we do not wish to whittle down the requirements of natural

justice and fair play in such cases where such requirement may be said to arise, we do not want that this court should be understood as having

stated that an inquiry with a right to representation must always precede in every case, however, different. The Universities are responsible for their

standards and the conduct of examination. The essence of the examination 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% and

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 quasijudicial inquiry with a right to 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 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 representatives with a view to ascertaining whether they had received assistance or not. To

do this would encourage indiscipline if not also perjury"".

36. The judgment makes a distinction between the case of an individual candidate against whom a case of misconduct is reported and a case

where examination of the whole centre or number of centers is cancelled. The Court, without mincing words, held that in case of mass copying

rules of natural justice cannot be adhered to and the examinees have no right of being heard in the matter individually. This view has all along been

followed.

37. The Punjab and Haryana High Court in AIR 1993 P and H 8130 while interpreting Regulation 28 of the Punjab and Haryana Board held that

inquiry contemplated under this regulation was only in respect of getting prima facie material that there was use of unfair means. The inquiry did not

mean an inquiry in which disciplinary proceedings are initiated and a chargesheet is issued. In other words the rules of natural justice were not

made applicable to cases of mass copying. This was done besides the fact that an express provision with respect to inquiry was existing on the

statute.

38. Learned counsel appearing for the petitioners have referred to some more judgments wherein application of rules of natural justice was

discussed. But in our opinion AIR SC 1269 has a clinching effect on the issue. This is so because it has interpreted its earlier decision in

Ghansahmdas Gupta's case in the light of the finding returned and set the matter at rest.

39. With this position of law we follow the above proposition laid down by the Supreme Court and hold that in cases where malpractice or mass copying on mass scale basis is reported to the body conducting the examinations, it will not be required to hear every individual candidate in respect of his defence against the allegations. However, the case would be different which relates to a single examinee facing inquiry regarding use of unfair means under the statute.

QUESTION NO. 6:

40. Much fault has been tried to be found by the learned counsel for the petitioners in respect of the source from which chairman can draw information of mass copying. Mr. Z.A. Shah appearing for the petitioners has called different sources to be incoherent and inconsistent. He has urged at the Bar that the notification leaves room for obtaining information from any of the sources connected with examination or unconnected. An information from the supervisory staff, or evaluating staff, or Board Staff, according to Mr. Shah, is a sound source of information because these are the people connected with conducting examinations. The concerned SubDivisional Magistrate or Tehsildar or a Police Officer is a person unconnected with examinations. The notification, according to Mr. Shah, commits a mistake in bringing into its fold so many unconnected officers for the purpose of transmission of information. Some petitioners have placed on record certificates issued by invigilating staff that the examination was conducted in a fair manner and there was no copying, much less mass copying. The Chairman has while receiving information from other sources cancelled the examination. The notification recognises the staff as well as some other officers to be the legitimate sources of information. Now in this case which of the sources is to be believed and which of them to disbelieved? If a source is to be disbelieved what shall be the parameters on which that will be done. We reiterate our anguish for the earlier court direction having been given a golden handshake. This court in Jammu and Kashmir Board of School Education Vs. Purana Devi and others while laying emphasis on the definiteness of source had laid stress upon that source being manned by educationists or men of high intellectual background. This court has no special regard or disregard for any clan of officers. It has the obligation of supervising the administrative and legislative

actions of the State from a supervisory vigil post.

41. We are ushering into 21st Century, an era of superspecialisation. If we cannot afford to specialise in all fields yet the endeavour of this court

will be to 'leave' unto ceaser what belongs to ceaser and leave unto God what belongs to God. We fail to understand as to whether the fate of

thousands of students can be allowed to be decided on a simple information given by an Inspector of Police, a Tehsildar, a SubDivisional

Magistrate or an Addl. Dy. Commissioner. All these officers are equally respected but they have their own fields. It was in this wake that a

suggestion was floated that flying squads be appointed and information with regard to mass copying received from those flying squads be valude.

However, the ground taken by the Board that a single flying squad may not physically be able to control a district seems to be plausible. But even

then Block level or Tehsil level flying squads could be constituted for the purpose. We, however, leave it for the Board to decide.

42. We, while answering this question hold that the sources from which information is sought to be obtained and honoured have been loosely laid

down. In a list of officers detailed out in definition of 'authorised State Government Officers' we hold Divisional Commissioner and Deputy

Commissioner to be the appropriate officers. Rest of the Officers brought into the fold of authorised state Government officers are different

functionaries of the State, working under the Divisional Commissioner or the Deputy Commissioner. In case they have some information with

regard to mass copying they can report it to the Divisional Commissioner or the Deputy Commissioner who may not be debarred from acting on

their information. We do not find the notification to be valid because of having included Addl. Deputy Commissioner, SubDivisional Magistrate,

Tehsildar, Police Officer, not below the rank of Inspector, and Authorised State Government Officer, in terms of clause 5 of the Notification. This

is so because the notification leaves the fate of the student community open in the hands of so many officers of inferior rank who can misuse the

power. However, the classification of officers under the head of 'officers of Education Department' in clause 6 of the notification, is sound and we

do not find any lacuna therein.

QUESTION NO. 7:

43. Having discussed the notification dated 27.1.1993 in all its pros and cons we find the same to be ultravires of Art. 14 of Constitution of India

and the Act, to the extent indicated below:

a) That the notification delegates the power of cancellation of examination to the chairman whereas the Act makes this power exercisable by the

Board. That upsets the scheme of the Act and makes a delegation of power against the spirit of the Act;

b) That the notification does not make any provision for verification of a report by subject experts when the same is received in terms of its clause

66(a). That way while taking action in terms of this subclause, the notification lays down a power which is arbitrary in nature;

c) That first proviso to the notification is faulty to the extent that it authorises ""the Authorised Government Officers"" to verify a report received by

the Chairman. After all how can a Tehsildar, a SubDivisional Magistrate, a Police Officer, Addl. Deputy Commissioner or Deputy Commissioner

verify the fact whether in a certain paper or at a certain centre copying was resorted to;

d) Clause (V) of the Definition Chapter of the notification from subclause (c) to (f) is struck down as the same makes the notification inconsistent

and vague.

QUESTION NO. 8:

44. The above discussions directly bring us to the question as to what is the effect of striking down the notification dated 27.1.1993 on the validity

of subsequent notification dated 29.6.1993.

45. The Notification dated 29.6.1993 has been passed in exercise of the powers conferred by the Notification dated 27.1.1993. IN the light of the

fact that we are striking down that notification in part, we quash the notification dated 29.6.1993 also. We are told that only a handful of students

can be interested in the litigation as a majority of them have appeared in the subsequent examination conducted by the respondent Board.

46. As a result of the findings recorded above we hold as under :

i) The Notification dated 27.1.1993 is struck down to the extent indicated while answering question No.7 above; ii) The Notification dated

29.6.1993 is quashed;

iii) The respondent Board for purposes of dealing with the result of candidates appearing from the concerned centers shall form a committee of experts who shall, after examining the answer scripts, verify as to whether or not the examinees of those centers have resorted to copying on large scale. For this purpose the Board authorities can also utilise the services of experts out side the Valley, if they so choose. The Committee shall record their reasons for coming to the conclusions. This exercise shall be undertaken within a period of fortyfive days from the date of this judgment; iv) The Board will, after receiving the report from the expert committee, take a denovo decision in the case; v) The Board will be at liberty to formulate fresh rules on the subject. But while doing so the parameters laid down above may be taken into consideration.

Following precautions shall also be taken in particular :

- A. Delegation of power of verification should be made to Body of Experts, which can well opine on the correctness or otherwise of the report of mass copying received by the Board;
- B. The Board must make endeavour to limit their prospective sources of information with regard to mass copying to high ranking officers of high calibre;
- C. The machinery of flying squads should be evolved in such a manner so that they can control the supervision of the centers falling within a definite area;
- D. The power of cancellation of results should be vested in the Board.

In the peculiar circumstances of the case, parties are left to beaf their own costs.