

(1997) 03 OHC CK 0017

In the Orissa High Court

Case No : Original Jurn. Case No. 130 of 1997

Gouranga Parida and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 26-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1997 Ori 177

Hon'ble Judges : S.C. Datta, J; R.K. Patra, J

Bench : Division Bench

Advocate : N.C. Panigrahi and K.C. Dash, for the Appellant;

Final Decision : Dismissed

Judgement

R.K. Patra, J.—By this application under Articles 226 and 227 of the Constitution of India, the petitioners, 35 in number, seek to quash the notification dated 5-12-1996 (Annexure-4) of the Council of Higher Secondary Education, Orissa, Bhubaneswar cancelling the examination of English-I Arts of the Second Higher Secondary Examination, 1996 held on 2-9-1996 in the Chitrotpala College centre, Akhua-Odang and awarding cipher in the said paper to the concerned examinees.

2. Briefly stated, the petitioners' case, is that as students of Chitrotpala College, Akhus-Odang, they appeared in the Second Higher Secondary Examination, 1996 conducted by the Council of Higher Secondary Education-opp-party No. 2 (hereinafter referred to as "the Council"). The examination was held on 2-9-1996 onwards. The Principal of the college was appointed as the Centre Superintendent and some of the lecturers of the college were employed as invigilators. The examination was conducted peacefully without any disturbances from any quarter and even police personnel from Patkura police station came to be detailed to maintain law and order situation and to prevent any untoward occurrence. On 2-9-1996 there was second sitting of the examination (2 p.m. to 5 p.m.) for Arts students in English-I. When the said examination was in

progress at about 3 p.m., two to three lecturers of Kendrapara arrived in the centre as the Flying Squad Party and went around the centre and detected some incriminating materials from only two examinees, one bearing roll No. 109 CD-223 from hall No. 9 and another bearing roll No. 109 CD-226 from hall No. 10, After taking their signatures on some papers the squad party left the centre. The specific case of the petitioners is that the squad party did not detect any mal-practice or any irregularity in any of the halls except hall Nos. 9 and 10. Even the Centre Observers/supervisors who came to the centre for inspection for all the days of examination including 2-9-1996 did not detect any case of mal-practice. The petitioners did well in all the papers. When the result was published, the cases of two students referred to above were only shown to have adopted mal-practice and the result of other candidates including the petitioners was not published. When the matter stood thus, the impugned decision was notified by which the examination of English-I Arts held in the second sitting of 2-9-1996 in the Chitrotpala College centre came to be cancelled and further the examinees were awarded cipher in the said paper. The petitioners challenge the validity of the impugned notification on the ground that it is arbitrary and is passed without complying principles of natural justice.

The opp. parties 2 and 3 have filed counter affidavit denying the allegations made by the petitioners. Their case is that on 2-9-1996 (second sitting) when the examination of English Paper-I was in progress, the Flying Squad Party vitiated the examination centre and found that the general conditions around the examination centre and inside the examination hall were disturbing with the presence of outsiders without any police protection. At first, two individual mal-practice cases were detected by the squad party who were booked under mal-practice but subsequently, the squad party found that majority of the examinees indulging in mal-practice and were also in possession of incriminating materials. On the arrival of the squad party, they threw the incriminating materials outside. The invigilators were also found to be abettors to the mal-practice. In such a situation, as it was not possible to detect individual cases for booking them under individual mal-practice, the squad party recommended for cancellation of the examination in question and submitted the report. The examination committee of the Council after taking into consideration of the materials placed before it, cancelled the examination of English Paper-I by awarding zero marks to the candidates who appeared in the examination held on 2-9-1996 (second sitting).

3. The petitioners have filed rejoinder affidavit sworn to by petitioner No. 1. While refuting the allegations made in the counter affidavit, it was reiterated in the rejoinder that the examination went off smoothly and there was no mal-practice except the two individual cases in hall Nos. 9 and 10. To prevent any disturbances, one A.S.I. of Patkura police station with five members of A.P.M. Force came to be detailed as per the command certificate at Annexure-7. In the rejoinder, it was further averred that the members of the squad party who visited the centre on 2-9-1996 were lecturers from Kondrapara College and the Chitrotpala College in which the petitioners were reading was considered to be a

rival college because the roll strength of Kondrapara College got diminished due to the establishment of Chitrotpala College.

4. Shri Panigrahi, learned counsel for the petitioners, contended that the impugned decision is arbitrary inasmuch as there was nothing before the Council to hold that there was mass mal-practice on the relevant day. He further submitted that the impugned decision having been taken without giving an opportunity of hearing, it is vulnerable. In this connection, he placed reliance on the judgments of this Court in Sanjay Kumar Ram and Others Vs. Council of Higher Secondary Education, Orissa and Others, and Deepak Kumar Pradhan v. Secretary, Board of Secondary Education, Orissa (79 1995 C LT 612. Shri Das, learned counsel appearing for opp parties 2 and 3 relying on the judgment of this Court in Asit Kumar Panigrahi and Sitakanta Das Vs. State of Orissa and Others, contended that there were adequate materials before the Council to take a decision and in a case where an adverse decision is taken in case of mass mal-practice there is no question of following the principles of natural justice.

5. From the rival contentions, of the counsel for the parties, the following two questions arise for consideration.

(i) Is the authority obliged to followed the principles of natural justice in case of cancellation of the examination basing on mass mal-practicc?

(ii) Was there any material available with the Council to arrive at a decision that on the relevant day there was case mal-practice in the examination centre?

6. Question No. (i)

Law is now well settled that if the examining body cancels examination as a whole at a particular centre due to adoption of unfair means by vast majority of examinees, opportunity to represent their cases to all the candidates is not necessary before the action is taken. The reason is obvious. It is not a case of any particular individual who is being charged with adoption of unfair means in the examination. Where vast majority of examinees are found indulging in unfair means in the examination, it is to condemn the examination as ineffective for the purpose it was held. It is a case where the examination is vitiated by adoption of unfair means by mass mal-practice. In these circumstances it is not necessary that the concerned candidates should be given the opportunity of being heard before cancellation of the examination. In support of the aforesaid statement of law, if any authority is necessary, the recent decision of the Supreme Court in Hanuman Prasad and Others Vs. Union of India (UOI) and Another, may be seen. In paragraph-4 of the judgment the Supreme Court held that no prior opportunity need be given in the case of mass copying. It is not the case where a named candidate committed copyright.

Question No. (ii)

Shri Panigrahi submitted that there was no mass copying as alleged. By referring to the sitting arrangement made on 2-9-1996 (second sitting) vide Annexure-1,

he submitted that the examination was held in 11 halls including a long hall and only in hall Nos. 9 and 10, two individual cases of candidates adopting unfair means were detected by the squad party which finds corroboration from the report of the Centre Superintendent at Annexure-5 and the certificates granted by the two invigilators at Annexure-5 series. With a view to buttress his argument, Shri Panigrahi brought to our notice the tabulation register of the petitioners at Annexure-3 and contended that had there been mass copying in the centre as alleged, then the students would have got high percentage of marks in other papers which was a factor to be taken note of in case of mass copying as noticed by the Supreme Court in the *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, . Shri Das produced before us the report of the flying squad on the basis of which, the Council took the impugned decision. Shri Panigrahi asked us not to rely on the said report inasmuch as the Council also deputed observers/supervisors on 2-9-1996 and no adverse report was furnished by them. We have carefully considered the submissions of the counsel for the parties. We have perused the report of the flying squad which consists of a statement accompanied with a report in a proforma. In the statement dated 3-9-1996 the flying squad mentioned as follows :

"..... Thereafter we proceeded to Chitrotpala College, Akhusodanga (C0.09) on the same date and in the same sitting and reached there at 4.15 p.m. The subject of Examination was Arts English Paper-I. In both the Centres (Korua Women's College and Chitrotpala College) almost all the candidates were in the possession of the incriminating materials. Hence, it was not possible on our part to make individual detection. Moreover, the conduct of examination in both the centres was beyond the rules of the C.H.S.E. Hence we recommend the cancellation of the examination in both the Centres on 2-9-96 in the second sitting....."

In the proforma report, the flying squad indicated as follows :

"1 to 10 XX XX XX

11.

General conditions around the Exam. Centre Peaceful/ Disturbing.

- Disturbing

12.

General conditions inside the Exam. Hall Peaceful/ Disturbing.

- Disturbing

13. Outsiders present -Yes/No. - Yes.

14. Police Protection sought - Yes/No. - Yes.

15.

Examinations conducted as per CHSE Rules - Yes/No.

- No.

16.

Malpractice adopted inside the examination halls - Yes/No.

- Yes

17. (a) (i)

Malpractice detected and reported - Yes/No.

- Yes

If yes. Roll Nos. reported - 109 CD 223 109 CD 226

(b) (i)

Form No. 20 (MP Form) duly filled in and submitted to CS - Yes/No.

- Yes.

(ii)

Receipt of the same from CS obtained - Yes/No.

- Yes (attached herewith).

(c) (i) Script seized and submitted to CS - Yes/No. - No.

(ii) Receipt from C.S. obtained - Yes/No. - -

(Such scripts and Form 2 be sent to DCE by name for necessary action).

18. to 20. XX XX XX

21. Majority involved in Malpractice - Yes/No. - Yes.

22. Invigilators abettors to Malpractice - Yes/No. - Yes

23. XX XX XX

24.

Are you recommending cancellation of the silting of examination - Yes/No.

- Yes

(A special report to this effect must be attached).

Majority of candidates were in possession of the incriminating material. On our arrival, some of those were thrown outside."

7. Learned counsel for the petitioners wanted us to reject the report of the flying squad on the following grounds :

Firstly it was argued that the members of the flying squad were lecturers of Kendrapara College which is a rival college of Chitrotpala College in which the petitioners are pursuing their studies. We do not find any merit in this ground taken on behalf of the petitioners. It is admitted at the Bar that Kendrapara College is a Government college and Chitrotpala College is a private one and, as such, we do not find why the former would find a rival is the latter college. Secondly it was suggested that observers/supervisors were also deputed by the Council to Chitrotpala College centre but they did not report anything adverse against the petitioners. The Controller of Examinations - opposite party No. 3 has filed an affidavit on 11-3-1997 stating that while the examination in respect of English Paper I (Arts) was being held at Chitrotpala College Centre on 2-9-1996 (second sitting), no observer/supervisor was deputed by the Council except the flying squad members for the relevant sitting. The petitioners have filed counter to the said affidavit on 12-3-1997. On careful examination of the matter, we are inclined to accept that on 2-9-1996 (second sitting) except the flying squad, no observer/supervisor/visited, the Chitrotpala College Centre. In the report of the Centre Superintendent at Annexure-6 there, is tacit admission that on 2-9-1996 it was the flying squad alone which inspected the examination centre. We do not find any valid reason as to why the Council will take the stand that on 2-9-1996 (second sitting) there was no inspection of the examination centre by any observer/supervisor except the flying squad. Thirdly it was contended that had there been mass mal-practice at the examination centre on 2-9-1996 (second sitting), all the examinees would have got high percentage of marks in other papers. Shri Panigrahi by drawing our attention to the tabulation register at Annexure-3 series submitted that in the second sitting of the examination held on 2-9-1996 all the examinees were awarded with cipher and their marks in other papers including aggregate marks were below fifty per cent and had there been mass mal-practice, the percentage of marks would have been on the higher side. Learned counsel by referring to paragraphs 11 and 12 of the judgment of the Supreme Court in the Bihar School Examination Board AIR 1970 SC 1269 (supra) urged that in case of mass mal-practice the percentage of marks would speak for itself. In the said case, the High Court of Patna quashed the decision of the Bihar School Examination Board cancelling the annual Secondary school examination, 1969 in respect of Hanswadih centre on the ground that the examinees were not given a chance to show cause before cancellation of the examination. It was argued before the apex Court on behalf of the examinees that in absence of any complaint about commission of unfair means in the centre, the Board was not justified in cancelling the result. The Court found that concerned tabulators had sent remarks on which investigation was made and the unfair means committee and the moderators gave their opinion and these were sufficient for taking the impugned action. In the circumstances, there was no need to wait for complaint nor was a complaint really necessary. The Court found that in all the papers the students who appeared at Hanswadih centre secured percentage of marks ranging from 70 to 100 per cent whereas in other centres the average marks of successful candidates was 50 per cent. Besides the opinion

of the Unfair means Committee and the Moderators, there was intrinsic evidence to show that there was mass mal-practice at Hanswadih centre, the evidence being securing of marks by the candidates in high percentage. In the case at hand the specific case of the Council is that there was mass copying in the examination (second sitting) held on 2-9-1996 at Chitrotpala College. It is not their ease that in the centre there was mass mal-practice in the examinations held in other sittings. The report of the flying squad indicated that all was not well in the examination held in the second sitting of 3-9-1996 at Chitrotpala College centre. We therefore, do not find any merit in the third ground taken by the petitioners.

For the aforesaid reasons, we have no hesitation to hold that there was sufficient material before the Council to take the impugned decision which cannot be faulted with.

8. Let us examine if the decisions cited by Shri Panigrahi would be of any assistance to the petitioners. In *Sanjay Kumar Ram and Others Vs. Council of Higher Secondary Education, Orissa and Others*, the Council had cancelled the result in English Paper-11 (arts) of the Second Higher Secondary Examination, 1991 on the basis that the candidates resorted to mass malpractice at the B.B. College centre. The Court found that the report submitted by the flying squad did not indicate that the students indulged in mass mal-practice in the examination centre. The report only mentioned that one candidate, namely, Saroj Kanta Mishra was found to be in possession of some printed materials and there was no statement in the report that any candidate other than Saroj Kanta Mishra was found indulging in mal-practice. In the circumstances, the Court found that there was no material before the Council to hold that all the candidates at the centre resorted to mass mal-practice. Cancellation of examination at a centre being an extreme step, the Court warned the Council to be cautious before any drastic action is taken.

9. In the case of *Deepak Kumar Pradhan* 79 1995 C LT 612 (supra), the Board of Secondary Education, Orissa had cancelled the examinations of all candidates who appeared at the Janta High School, Godbhaga centre on the ground that there was mass mal-practice. Being called upon by the Court, the Board produced certain documents including the report of the flying squad which visited the examination centre on 11-4-1994 and its report was to the effect that the examination was being conducted without any out-side interference. No material was made available to the Court to hold that there was mass mal-practice in the concerned centre. In these circumstances, the Court held that there was no material before the Board to take a decision that there was mass mal-practice in the examination centre.

Both the cases relied on by the learned counsel for the petitioners, for the reasons indicated above are distinguishable and of little assistance to the various contentions raised in the matter.

10. In the result, we do not find any merit in this writ application which is accordingly dismissed. There would be no order as to costs.

S.C. Datta. J.

11. I agree,