

(2005) 07 OHC CK 0034

In the Orissa High Court

Case No : Writ Petition (Civil) No. 9829 of 2004

Governing Body, Jambeswar Mahavidyalaya

APPELLANT

Vs

Council of Higher Secondary Education and Another

RESPONDENT

Date of Decision : 18-07-2005

Acts Referred:

Citation : (2005) 100 CLT 403 : (2005) 2 OLR 518

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

Bench : Division Bench

Advocate : B. Satapathy and A. Ali, for the Appellant; S.B. Jena, S. Behera, S.S. Mohapatra and R.C. Ray, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanty, J.—The petitioner, Governing Body of Jambeswar Mahavidyalaya in the district of Balasore, calls in question the decision of the Council of Higher Secondary Education, Orissa in Notification dated 25.6.2004 cancelling the examination held in English Paper II in second sitting of Higher Secondary Examination, 2004 on 11.3.2004 on the ground that there was no material before the Examination Committee to come to a conclusion that either there was mass malpractice in the center or the examination in the center on the relevant date was not conducted in accordance with the rules and regulations of the Council.

2. The brief fact of the case is that the petitioner-college was permitted to be established from the academic session 1995-96 by the Government and it was affiliated by the Council from the said session and permanent recognition was also accorded. 107 regular students of the petitioner-college appeared in +2 Arts Final Examination, 2004 as per the date and time schedule fixed by the Council of Higher Secondary Education, Orissa. It is claimed that the examinees appeared at the examination and the examination was conducted by the Center Superintendent strictly in accordance with the norms prescribed by the Council. There was absolutely no malpractice nor any such malpractice was ever detected

during the second sitting of the examination in English Paper-II on 11.3.2004. However, it is submitted that one Gourahari Behera, Lecturer in History of Atalbihari College, Basudevpur visited the center on 9.3.2004 as observer and invigilated the examination of English Paper-I. The examination was found to have been conducted in accordance with the norms prescribed by the Council. On 11.3.2004, one Pratap Kumar Nayak, Lecturer in History of Atalabihari College, Basudevpur visited the center as an observer of the Council when English Paper-II was being conducted during the second sitting. He thoroughly checked each student with the help of invigilators and Center Superintendent and remained throughout the examination. No student was detected to have indulged in adoption of unfair means or possessing neither incriminating materials nor any such students was booked for malpractice. However, it is alleged that the Examination Committee of the Council, on the basis of the purported report submitted by the observer, had illegally taken a decision to cancel the said examination and awarded "Of" mark in English Paper-II. The Council has notified so in Annexure-1. The Principal, soon after the notification appealed to the Council that absolutely no malpractice having been done nor detected by the Supervisor nor the Supervisor having found any irregularity or illegality in the conduct of examination, the cancellation of the examination center was bad and liable to be revised. However, nothing having happened, on the representation of the petitioner, it has approached this Court in the present Writ Petition.

3. The Council, through its Controller of Examination, has filed a counter refuting the allegations and claims made by the petitioner. The Council has taken the stand that the Center Superintendent who himself is the Principal of the College, violating the norms and instruction of the Council, was himself along with other teaching staff of the College involved in dictating answers to the examinees which has been noted and reported by the observer Sri P.K. Nayak. The Council has rightly taken a decision to cancel the examination and awarded "Of" marks to all the students who were appearing in English Paper-II conducted in the center. It is submitted in Paragraph-6 of the Counter affidavit that though the observer deputed on 9.3.2004 had not given adverse remarks on the conduct of the examination, the observer deputed for the subsequent sitting i.e. on 11.3.2004 found mass malpractice and mass copy in the said College Center and further reported that the Center Superintendent as well as other staffs were supplying materials to the students at the time of examination. The examination in English Paper-II having not been conducted according to the norms and rules of the Council of Higher Secondary Education, the said examination has been cancelled. It is emphatically submitted and reiterated in paragraph-9 of the counter affidavit that the Center Superintendent with other invigilators were involved in dictating answers to the students and as such, there was no occasion to collect any incriminating materials.

4. In order to see for ourselves, we had called upon the Council to produce the report of the observer on the basis of which the Examination Committee of the Council has taken a drastic decision to cancel the examination held in the Center

during the second sitting of 11.3.2004 i.e. English Paper-II. The report in original has been produced for our perusal. Perusal of the report shocks our conscience as to how a responsible body like the Examination Committee of the Council has been dealing with the cases of mass malpractice. No doubt, it is true that it is high time that the Council should rise to the occasion to stop the menace of malpractice and mass malpractice sometimes at the instance of the colleges. But before a decision is taken to cancel the examination, the examining authority must scrutinize the reports in its proper perspective and when it is satisfied that the examination has not been conducted in accordance with the rules and norms prescribed and the examinees have resorted to mass copying and as such, the examination is vitiated, in that situation only the drastic step of cancellation is to be taken.

5. The report of the observer in the prescribed format at Section 11 discloses that members of the staff other than invigilators were found present and all were involved in creating disturbances in the hall. In answer to column No. 15 as to whether there was malpractice inside the Examination Hall, the answer of the observer is "NO" so also in respect of column No. 16 as to "Whether malpractice detected and reported, the report of the observer is "No". In column 16, the observer writes that the Superintendent is not co-operative and does not care to the observer and he is guilty of indifference to the presence of observer. However, under column No. 22, the observer reports that he himself (meaning Center Superintendent) was involved in dictating answer to the different candidates of his choice in the Examination Hall. Column 22 of the Format for report of the Examination Supervisor is quoted here under for clarity :

22. Whether center Superintendent Yes, He himself was indifferent and abettor to Malpractice involved and dictating (If yes give a brief report) answers to the different candidates of his choice in the Examination Hall. On the basis of the aforesaid observations, the Supervisor had recommended cancellation of examination. On the basis of such report, the Examination Committee of the Council has taken the decision to cancel that examination. Law is well settled that if in an examination center, the examinees resort to mass malpractice and the situation in the center was so chaotic that no examination worth the name was possible to be conducted in accordance with the norms of the examining authority in such a situation the examining authority may be justified in cancelling such examination to maintain its standard of education.

6. But in the case at hand as observed earlier, the supervisor's report nowhere discloses that the Higher Secondary Examination (+2) held on 11.4.2004 in English Paper-II in the petitioner's center was not conducted in accordance with the norms prescribed and that the examinees in the center were adopting mass malpractice. The observer reported that the Center Superintendent was dictating answer to some selected students in the Examination Hall. The names of such selected students and the manner in which the Superintendent was dictating answers to them and as to whether by such dictation, the examinees of the

entire hall/halls were receiving help is not disclosed. The report rather is clear that it was only to some favoured/selected students. If at all, those students alone could have been booked for malpractice or steps should have been taken by the Council to take steps against the Center Superintendent. But this report by any imagination could not have been constructed as a report of mass malpractice or mass copying by all examinees to justify cancellation of the examination of all the examinees appearing in the different halls/rooms in the center. The seat chart/arrangement accompanying the report of the observer indicates that examination was being conducted in three different rooms such as Room No. 1 & 2 and Hall No. 1. But the supervisor's report does not speak as to whether the Center Superintendent was dictating answer to his favoured students appearing in the examination in all the three rooms according to the their seat chart. The Examination Committee appears not to have applied its mind to the report while taking the drastic decision to cancel the examination conducted in the center. The Examination Committee ought to have considered and scrutinized the report with utmost care and caution before taking the decision since it involves career of large number of students.

7. In that view of the matter, we allow the Writ Petition and quash the notification dated 25.6.2004 cancelling the examination held in 2004 so far as it relates to Jambeswar Mahavidyalaya, Garasanga, Balasore and direct the Council to revise and publish the result forthwith taking into consideration the marks secured by the examinees in English Paper-II.

The Writ Petition is thus allowed with a cost of Rs. 1,000/-(Rupees One Thousand).

J. P. Mishra, J.

I agree.