

(2003) 06 OHC CK 0067

In the Orissa High Court

Case No : O.J.C. No"s. 9700 to 9709 and 10924 of 1999

Jhilly Mallick and Others

APPELLANT

Vs

Board of Secondary Education and Another

RESPONDENT

Date of Decision : 17-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 96 CLT 458

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : R.N. Acharya, S.K. Choudhury, S.R. Kanungo, U.K. Mishra, B.K. Barik and P. Prasad, for the Appellant; S.S. Das-1 and K.C. Swain, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—This common judgment shall abide the result in all the above noted writ applications filed by 11 Students of Government Girls High School, Madhapur, Cuttack, challenging to the Notification of the opposite party No. 2 made on behalf of opposite party No. 1 on 22.5.1999, vide Notification No. 3800 (Exam. Conf.) Annexure-3 by declaring inter alia cancellation of the Mathematics Paper-II (MTG) with respect to 225 Students of that Centre on the ground of mass mal practice.

2. It is the case of each of the petitioners that they were appearing in the Annual H.S.C. Examination held in March, 1999 and 20 Girls from their School i.e., Government Girls High School, Madhapur were amongst the other Students of different High Schools appearing in that Examination Centre at L.N. Bidyapitha, Arakhpatna. Each of them have claimed to be meritorious Student and victim of wrong decision of Controller of Examination in scratching their papers for the Mathematics (MTG) by awarding "O" mark and as a result of that each of them have failed in that examination. Petitioners have claimed illegality in the action of the opposite party on the ground of non-affording opportunity of personal hearing and taking such decision, in the absence of any adverse, report relating

to mass mal practice either from the Centre Superintendent, Invigilators or Members of Special Squad. They have also claimed to treat their cases by following the "Hard Case Rule" and to declare them pass.

3. At the time of hearing, Mr. S.S. Das (1) learned counsel appearing for the opposite party members stated that the opposite party has filed a counter affidavit in O.J.C. No. 9708 of 1999 and that affidavit be accepted as the reply of opposite party members in each of the above noted O.J.Cs. Counsel for the petitioners had no objection to that submission. In that counter affidavit, it has been stated on behalf of the opposite party that on 12.3.1999, when the Examination in respect of Mathematics Paper (MTG) was going on in the concerned Centre a Special Squad of the Board arrived there and found indiscriminate mass mal practice by Students and it became difficult for the Members of the Special Squad and also the Centre Superintendent to control that situation because of the Mass Mal Practice and outsiders being present inside the Examination Halls. Thus, when the Special Squad submitted their report the Examination Committee considered the same and took the decision as per Annexure-3 and cancelled the Examination of the aforesaid Centre so far as the Mathematics (MTG) is concerned by awarding "O" mark.

4. There is nothing on record to dispute or to controvert to the aforesaid counter of the opposite party.

5. So far as the grievance of the petitioners relating to non-granting them opportunity of personal hearing, this Court finds no illegality in that respect, inasmuch as the report of the Special Squad having not been alleged and proved to be infested with falsehood and malafide is expected to be accepted by the Court when the Examination Committee has accepted the same for good reason. In a case of Mass Mal Practice neither it is the law nor there is any precedent that the principle of "audi alteram partem" is to be followed when the regulation does not provide for grant of personal hearing in such a case. See the case of The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, Therefore, this Court finds no merit in the contention of the petitioners to interfere with Annexure-3 on the ground that they were not provided with personal hearing before taking the impugned decision.

6. Learned counsel for the petitioners also argued that the mark-list indicates that petitioners had secured pass marks in other subjects and therefore, they cannot be regarded as non-meritorious and under such circumstance, Annexure-3 be set at naught as against the petitioners or else in the interest of justice principle of Hard Case Rule be adopted in their case. This Court finds no merit in that contention too inasmuch as the Hard Case Rule is not applicable to the present case. A further analysis in that respect is not necessary. The principle of natural justice is not extended in this case inasmuch as that is not available to the petitioners because the special squad found mass copying in that Examination Centre. Even if it shall be accepted for the sake of discussion that petitioners were exceptions to such Students who were indulged in the mass

copying then also it is difficult to make a distinction when there is no affidavit or contention of the Invigilators or Centre Superintendent that the present petitioners were not amongst the Students who were indulged in copying. Apart from that in the case of Ramgopal Bhadoriya and Others Vs. Secretary, Board of Secondary Education and Others, it has been observed that-

"...True it is, when there is mass scale copying and examination in respect of centres pertaining to some papers has been cancelled, there may be some innocent students who suffer but that will not be of paramount consideration or a governing factor to attract the concept of audi alteram partem. The Board has to take a very practical decision in cancelling the results. When there are so many students it is not expected of the Board to conduct a quasi judicial enquiry to arrive at the truth or falsity of allegation against each examinee. May be in a given case when at the principal centre a single candidate is involved in malpractice the Board while taking drastic decision against him may be required to follow the principles of natural justice but in a case of mass copying the principles of natural justice are not attracted. Requiring the Board to do so would usher total chaos and anarchy."

7. For the reasons indicated above, this Court finds that the writ applications and the prayers therein do not bear any merit. This Court does not find any good reason to interfere with the impugned Notification. Thus, each of the writ applications stands rejected and the O.J.Cs are dismissed.