

(2009) 02 OHC CK 0066
In the Orissa High Court
Case No : Writ Petition (C) No. 10675 of 2008

Jyotiprakash Rout and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Citation : (2009) 1 ILR (Ori) 591

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

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Heard Mr. Budhadev Routray, learned senior counsel for the Petitioner, Mr. B. Dash, learned Counsel for the State and Mr. Mohapatra, learned Counsel for the Board of Secondary Education, Orissa.

2. The Petitioners along with others totalling to 220 students appeared in the Annual High School Certificate Examination, 2008 from 29RC Bainsia Anchaliika High School Centre at Dhenkanal. On 28.03.2008, they appeared in the third Language Paper, i.e., Sanskrit/Hindi from the said center. When the result was published on 25.06.2008, the Petitioners found that their results were not declared. When they received their mark-sheets, they found that they have been awarded "0" marks on the ground of mass mal-practice. It has been pleaded by the learned Counsel that the career of innocent students like the Petitioners has been marred. It has been further stated in the writ application that there was absolutely no ground on the part of the opposite parties to come to the conclusion that there was mass malpractice by the candidates on the date when they appeared in the Third Language Paper.

3. The opposite party No. 2 has filed counter affidavit, inter alia, stating that the Special Squad appointed by the opposite party No. 2 inspected the examination center from where the Petitioners were appearing on 28.03.2008. When the examination in Third Language Paper was being conducted, they have submitted

a report stating that during their visit they found large number of outsiders inside the school campus supplying books etc. to the examinees. They also reported that they have received three bags of printed materials and manuscripts from the Centre Superintendent which were seized from the candidates at 7.45 A.M. in their presence. Such report was considered by the Examination Committee in its meeting held on 28.03.2008, 31.06.2008 and 14.06.2008. It was resolved in the said meeting to cancel the result of the Annual H.S.C. Examination, 2008 in respect of the center from which the Petitioners have appeared. Reliance has been placed by the opposite party No. 2 on Regulation 41(b) of the Board of Secondary Education.

4. Mr. Routray, learned senior counsel submits that there was absolutely no material before the Examination Committee to come to the conclusion that there was mass mal-practice in the Examination Centre. He further submits that the report of the Special Squad in Annexure-A/2 shows that the said Special Squad arrived at the Examination Centre at 7.45 A.M. and the alleged incriminating materials stated to have been received by the said Special Squad from the Center Superintendent also discloses that the said alleged printed materials and manuscripts contained in three bags were handed over to them by the Center Superintendent at 7.45 A.M. Hence, he submits that the alleged incriminating materials cannot be stated to have been seized from any of the examinees/candidates in presence of the members of the Special Squad. Mr. Routray, further draws the attention of this Court to the report of the Special Squad in the printed format contained in Annexure-A/2 to the counter affidavit to show that the squad has stated therein that no F.I.R. was lodged before the police and further it has been stated that no incriminating materials have been seized from any candidate. Mr. Routray, also contends that from the resolution of the Examination Committee, as would be found from the Annexure-B/2 to the counter affidavit, it would be seen that the Examination Committee without assigning any reason and only recording that the reports submitted by the Centre Superintendents, Flying Squads, Special Squads, Observers and Sub-Collector, Dhenkanal being examined by the said Examination Committee took the resolution that on the basis of the said reports, results of the Examination Centre from where the Petitioners appeared as well as four other centers are cancelled. Relying upon the various case laws, Mr. Routray submits that law is well settled that while cancelling the examination of a number of students, the Board should be very cautious as any erroneous decision would tantamount to hampering the career of innocent students, inasmuch as, cancelling the examination is an extreme action which in the process may affect innocent students.

5. Mr. Mohapatra, learned Counsel appearing for the Board of Secondary Education also relies upon various decisions and contends that in the facts and circumstances of the case, this Court should not interfere with the decision taken by the Examination Committee.

6. Considering the submissions made at the Bar, the moot question which arises

to be determined in the case is as to whether on the basis of the reports of the Special Squad, it can be concluded that the Petitioners and other candidates adopted mass mal-practice on 28.03.2008, when the examination in the Third Language Paper was being conducted. "Mass Mal-practice" has not been defined in the Regulation of the Board and hence, the general meaning of the said phrase should be taken into consideration. If mal-practice is adopted by majority of the students in an examination in common parlance, the same can be held to be mass mal-practice. According to the Chambers Dictionary (10th Edition), "Mal-practice" means an evil or improper practice. "Mal-practice" can be adopted by an examinee if he/she reproduces an answer by taking aid of any book/printed materials/hand written scripts. When such malpractice is practised by majority of examinees in any examination, the same can be turned to be "Mass Mal-practice". It is, therefore, necessary that in order to come to the conclusion that mass mal-practice was adopted in any examination center, there must be sufficient materials either seized or found from the possession of the examinees during course of the examination, which has been utilized by such examinees to give the answers to the question sets in the examination. In the case of Indira Gandhi Mahila Mahavidyalaya and Another Vs. The Council of Higher Secondary Education and Others, a Division Bench of this Court, while considering similar facts, as in the present case, upon analyzing the report of the Flying Squad holding that the examinees and others while taking drastic steps of cancelling the examination, must be satisfied that the examination conducted in the center was not in accordance with the norms prescribed and that vast majority of the students were adopting mal-practice, which was not practicable for the Squad to detect, held that a decision for cancelling the examination of all students appearing from the center being taken without due application of mind and in a casual manner was untenable and quashed the said decision of cancelling the entire examination. In the order dated 04.12.2007 passed in W.P.(C) No. 12488 of 2006 (Manoj Kumar Mahalik and Ors. v. Council of Higher Secondary Education, Orissa and Ors.), this Court considering the decision of cancellation of examination of a center on the ground of mass mal-practice held that law requires that while cancelling the examination of a number of students, the Council should be very careful inasmuch as by such action the education career of the students would seriously hamper. The examination authority, like the Council, while taking the extreme action of cancelling the examination of a number of students should be conscious that while it is cancelling the entire examination, there may be some brilliant and good students who have not indulged in mal-practice. It was also held that law further requires the examination authority to be fully satisfied that the examinees were resorting to mass mal-practice and the examination of the center was not conducted in accordance with the rules prescribed by the Council. This Court also came to similar conclusion in the order dated 11.12.2007 passed in W.P.(C) No. 7959 of 2007. Facts of the present case are akin to the aforesaid decisions.

7. Mr. Mohapatra, learned Counsel for the Board strenuously urges that the

reports of the Special Squad and the Center Superintendent coupled with the incriminating materials seized from the candidates clearly establish a case of mal-practice. He has relied upon various case laws i.e. *Rajiv Ratna Shukla and Another Vs. University of Allahabad and Others*, *Asit Kumar Panigrahi and Sitakanta Das Vs. State of Orissa and Others*, *Susanta Kumar Parida and Ors. v. Council of Higher Secondary Education, Orissa and Ors.* 77 (1994) CLT 215, *Kumari Rani Swati Monalisa Vs. Chairman, Council of Higher Secondary Edn. and Another*, *The Bihar School Examination Board v. Subhas Chandra Sinha and Ors.*, Civil Appeal No. 2620 of 1969 and *Balia Women's College v. Council of Higher Secondary Education and Ors.*, O.J.C. No. 8779 of 1996. On examining the facts of the aforesaid cases, it would be seen that the facts of the present case are distinguishable from the same. However, it has been held repeatedly in the aforesaid decisions that in order to find out as to whether mass mal-practice was adopted by the candidates, the relevant facts of each case are to be looked into. Mr. Mohapatra, learned Counsel also relies upon Regulation 41(b) of the Board, which is as follows:

The examination Committee where it is satisfied that on the basis of reports received from the Superintendent, Deputy Superintendent and/or supervisions, inspectors and observers appointed for the examination centers that the examination has not been conducted as per the rules may take steps as considered appropriately the Committee including cancellation of the examination wholly or in part.

8. Relying upon the aforesaid Regulation, it has been submitted that the Examination Committee on examining the reports produced before it has rightly come to the conclusion that the Petitioners and other candidates adopted mass mal-practice.

9. From the report of the Examination Committee annexed as Annexure-A/2 to the counter affidavit, it is found that Mr. Routray is correct in submitting that the Special Squad arrived at the center at 7.45 A.M. and in the receipt granted by the said squad with regard to the receipt of the printed materials and manuscripts from the Center Superintendent, the member of the Special Squad has mentioned that it received three bags of printed materials and manuscripts from the Center Superintendent at 7.45 A.M. and, therefore, it cannot be concluded that the said materials were seized in the presence of the Members of the Special Squad. There was absolutely no materials before the Examination Committee showing that the alleged incriminating materials were utilized by any of the candidates nor there is any material to show as to which of the printed materials or manuscripts were seized from which candidates. Further, even though, it was reported by the Members of the Special Squad that large number of outsiders were present near the center, it appears that no F.I.R. was lodged to that effect before the police. It is also strange that in the printed format, the Special Squad reported as follows:

Received Nil pieces of incriminating materials of candidates bearing above

mentioned roll numbers detected to have been adopting M.P. by Special Squad as mentioned against Serial No. 10(c) and the respective answer paper with the incriminating materials will be dispatched to the Board.

10. Though in the said report, the Special Squad reported that during their visit, a large number of outsiders present inside the campus were supplying books etc. to the examinees and mass mal-practice was going on in the center, but they have not seized any incriminating materials or books alleged to have been supplied by the outsiders to the examinees or any of the examinees. From the minutes of the proceedings in the meeting of the Examination Committee, it appears that except stating that on the basis of reports submitted by the Center Superintendent, Flying Squads, Special Squads, Observers and Sub-Collector, Dhenkanal, the Examination in the centers including the center from where the Petitioners were appeared were cancelled, but it appears that the Examination Committee has neither scrutinized the report of the Special Squad in its proper perspective nor has applied its mind to the same. The decision appears to have been taken in a routine manner. As already held in the case of Indira Gandhi Mahila Mahavidyalaya (supra), it appears that the Examination Committee has not dealt with the matter with care and caution and has taken the extreme decision of cancelling the examination.

11. Considering the above fact and law, this Court is of the opinion that the decision of the Examination Committee for cancelling the examination in 29RC Bainsia Anchalika High School Centre at Dhenkanal center cannot be sustained. The said decision under Annexure-B/2 in case of 29RC Bainsia Anchalika High School Centre at Dhenkanal center is, therefore, struck down/quashed and it is directed that the results of the Petitioners along with other candidates appearing in the said center be declared within a period of two months from the date of production of a certified copy of this order by any of the Petitioners before the opposite party No. 2 Though it is stated by the Petitioners that in the meantime six, out of the seven Petitioners, who appeared in the Supplementary examination have already passed, it is made clear that on verifying the marks secured by the Petitioners and other similarly placed examinees in the Annual H.S.C. Examination, 2008 as well as in the Supplementary Examination, 2008, such candidates should be awarded the marks in accordance with the regulation of the Board of Secondary Education, Orissa.

The writ application is accordingly allowed.