

(2002) 01 MP CK 0072
In the Madhya Pradesh High Court
Case No : Writ P. No. 3048 of 2001

Ku. Rolam Tiwari and Another	Vs	APPELLANT
The Board of Secondary Education and Another		RESPONDENT

Date of Decision : 23-01-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 2002 MP 184 : (2002) 4 MPLJ 67

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : R.N. Singh and Arpan Pawar, for the Appellant; Jailaxmi Aiyer, for the Respondent

Judgement

Dipak Misra, J.

The seminal issue that arises for consideration in the present writ petition is whether the two petitioners who have approached this Court to get their answer scripts evaluated and results thereof declared by the Board of Secondary Education (in short "the Board") through their natural guardians, invoking the extraordinary jurisdiction of this Court are entitled to the said relief.

The facts as have been depicted in the writ petition are that the petitioner No.1 appeared in the annual examination of class XII and the petitioner No.2 in class X as regular students in the year 2000-2001. It is pleaded that they have been good students and the standard of teaching in the respondent No.2, school, has been quite exemplary and hence, they expected good percentage of marks. Their examination centre along with other students was fixed at Government Girls Higher Secondary School, Garh, District, Rewa, and the Center superintendent was one Shri V. D, Dixit, a Lecturer from another school. Sufficient arrangements were made at the Centre so that examination could be carried out in a smooth manner without any obstruction. The Block Education Officer, District Education Officer and the District Collector through their representatives kept a regular vigil on the conduct, of examination and none of the authorities have ever found a

single student engaged in any kind of unfair means. As role of the local police was found to be suspicious, an inspection was conducted by the competent authorities on 20th March 2001. After the successful completion of the examination the petitioners along with other students eagerly awaited for their results but as a misfortune would have it, they came to know from a daily newspaper dated 13-01-2001 that their examination had been cancelled. With such a news item when they approached to the respondent No.2 he expressed his shock and surprise.

It is putforth that cancellation of results by the Board is without any rhyme or reason. It is pleaded that when the examination was conducted in a fair manner in different schools under the supervision of various authorities of the State Government, there was no justification for cancellation of the examinations in question. It is the further case of the petitioners that no adverse report was submitted in relation to the conduct of examination and the Board has acted without any foundation. It is urged that the conclusion with regard to unfair means adopted by the petitioners has been arrived at without scrutiny of the answer books and without following the principles of natural justice. With the aforesaid averments reliefs have been sought for commanding the respondents to evaluate the answer books of the petitioners and to declare their results.

A return has been filed by the answering respondent No. 1 contending, inter alia, that the Board has been formed to regulate education in the State and other matters ancillary thereto. While conducting the examination the Board takes all necessary steps for holding of examination in a valid, reasonable, comprehensive, elaborate manner and also to see that the results are published having regard to the propriety. It is putforth that during examination at the concerned centre a D.O. letter was sent by the Assistant Centre Superintendent of the "Government Girls" Higher Secondary School to the Secretary of the Board stating that the school was situate in the centre of the market and Immediately behind the school there was a small compound bounded by wall beyond which there was a "Maidan" where number of people had gathered to assist the students in masscopying. It was stated therein the persons providing copying materials to the students used to jump over the wall and enter inside the examination halls. The life of the invigilators was in danger. A report was submitted to the police station but the action of the police itself was suspicious. Complaints made to the district authorities did not bring fruitful results. In the report it was mentioned certain invigilators were taking money from the students and helping them in copying at the centre. The centre Superintendent was actively colluding in this regard and in spite of copying in mass-scale the district administration did not take any action. The said report dated 3-4-2001 has been brought on record as Annexure R/1. It has also been pleaded in the return that the Centre Superintendent has also submitted a report indicating that there was a gang which helped in the masscopying and they were four times then that of the number of students and the police was unsuccessful in controlling the same. A request was made to cancel the examination held at the centre. Vide Annexure

R/3 V.D. Dixit had requested that he was not able to perform the duties to stop the masscopying, therefore, he should not be made Superintendent for any other examination.

Before I proceed to deal with the submissions raised at the Bar, it is to mention that though the petitioners filed writ petition in the representative capacity for all the students of the school. It was confined to the petitioners. It is further relevant to state here that when the matter was taken up on 21-9-2001 Mr. R. N. Singh, learned senior counsel had drawn the attention of this Court to Annexure p/5 whereby report was submitted by the Block Education Officer, Garh, District, Rewa, wherein * , said officer had indicated that the examination was conducted in a proper manner; iui there was no complaint with reference to masscopying. At that stage the learned counsel appearing for the Board referred to the documents filed along with the return to show that there had been mass copying. Taking note of the factual scenario a direction was issued for the personal presence of the said officer so that certain guidelines could be given for future. It is pertinent to mention here in course of hearing the secretary of the Board was present in connection with the W. P. No. 3031/2001. The secretary submitted that masscopying had become quite rampant and various means have been taken recourse to by the students and the public and, therefore, it is not possible to arrive at the conclusion that there has been masscopying by comparing answer scripts. The secretary wanted to show a video cassette. It is relevant to state here that this case was tagged with the aforesaid writ petition and accordingly this Court directed video cassette to be shown on 22-10-2001. The video cassette was shown for some time and as it required some more time the matter was adjourned to 23-10-2001. On 22-10-2001 this Court required the presence of the learned Advocate General of the State. It is apposite to state here, the commissioner, public Instructions, who was present in the said writ petition was also directed to remain present. On 23-10-2001 a direction was issued for personal presence of V. D. Dixit, who was the centre superintendent. A direction was also given for personal presence of the Assistant Centre superintendent, who had signed the Annexure R/1. The matter was taken up on 29-10-2001 and on that day the Assistant Incharge of the Examination Centre was present. The Superintendent of the examination centre was absent. However, taking note of the factual scenario this Court did not insist upon the personal presence of the Centre Superintendent, as it was thought directions could be given without his presence.

I have heard Mr. R. N. Singh, learned Senior Counsel alongwith Mr. Arpan Pawar, learned counsel for the petitioners and Miss Jailaxmi Alyer, learned Counsel appearing for the Board.

It is submitted by Mr. Singh that there was no masscopying at the Centre and the Board has not taken pains to arrive at the conclusion in this regard and hence, the action taken by the Board is sensitively susceptible. It is also urged by him when there is one report by the Block Education Officer and this report

was by the person who was the Incharge of the Examination Centre and hence, there should have been a proper enquiry and results should not have been cancelled without doing the same. Learned counsel has also contended that the petitioners should have been afforded an opportunity of being heard before the examination was cancelled.

Resisting the aforesaid submissions it is contended by Miss Aiyer that when the competent authorities who were the incharge of the Examination Centre had submitted the reports which were quite acceptable there was no reason to conduct an enquiry and the Board was within its jurisdiction to cancel the results. The learned counsel has further submitted that the report of the Block Education Officer is of no significance in the obtaining factual matrix. As far as the applicability of the principles of natural justice is concerned, submits Miss Aiyer, the same not attracted to a case of masscopying.

To appreciate the rival submissions raised at the Bar, I have carefully perused the Annexures R/1 and R/3. On a scrutiny of the same it is quite perceptible that there was masscopying of grave magnitude and allegations were made against the Centre Superintendent and invigilator. It has been mentioned therein that books were taken into the examination halls and copying was taken recourse to. It has also been urged that masscopying was permitted on collection of money from the students. On a perusal of the Annexure R/2, it is perceivable that the Centre Superintendent has reported that there was masscopying and it was uncontrollable. Vide Annexure R/3 the centre superintendent has indicated his helplessness and wanted not to be so appointed in future.

I have perused the Annexure p/5, the Block Education Officer has indicated that there was no complaint raised with regard to masscopying.

The centum issue that arises for consideration is whether there was proof of masscopying and the documents which have been brought on record would be brushed aside in a light manner. As has been Indicated above, the documents speak in volumes in a most categorical and unequivocal manner that there was masscopying. It is alarming to note that there was not only masscopying but the allegations that there was collection of money to assist the students in the masscopying. It is also amazing to note that the police did not render assistance and the miscreants entered into the various rooms in the examination Centre and supplied copying materials to the students. A stray observation by the Block Education Officer cannot be the foundation to come to the conclusion that there was no masscopying. The Board, in my considered opinion, was absolutely Justified in arriving at the conclusion that there was masscopying. In this context I may profitably refer to the decision rendered in the case of *Madhyamik Shiksha Mandal M.P. v. Abhilash Shiksha Prasar Samiti* 1997 (2) J.L.J. 113, where the Apex Court expressed as under :-

"2. We feel a little distressed that in a matter like this the High Court should have interfered with the decision taken by the Board. The contention was that the

examination was cancelled on the report of a Naib Tehsildar dated 18-3-1996 who was not authorised by the Board to visit the examination centre. It is irrelevant whether the Naib Tehsildar was authorised by the Board to visit the centre or not but what is of importance is the fact that He did visit the centre and found the students copying even before the question papers were distributed. This clearly implies that the students were aware of the questions indicative of the leakage of the question paper. The Naib Tehsildar even complained that the teachers did not object to the students entering the examination hall with books and copying material. That would mean that either they were hand in glove with the students or, they were, for some reason not able to stop the students from copying. This is also evident from the report of the Superintendent of the Centre. The Naib Tehsildar states that neither the Superintendent of the Centre nor the invigilators were prepared to interfere and were not able to explain how the students could enter the hall with books, etc., and copy therefrom with impunity. The Superintendent of the Centre States that he had requested the Naib Tehsildar to stay for the three hours but the Naib Tehsildar did not stay. The report of the valuers at page 81 also goes to show that there was mass copying. The High Court brushed it aside as subsequent material. But it supports the Board's decision and it was improper in a sensitive matter like this to ignore it on such a technical ground. In the face of this material, we do not see any justification in the High Court having interfered with the decision taken by the Board to treat the examination as cancelled. It is unfortunate that the student community resorts to such methods to succeed in examinations *and then some of them come forward to contend that innocent students become victims of such misbehaviour of their companions. That cannot be helped. In such a situation the Board is left with no alternative but to cancel the examination. It is extremely difficult for the Board to identify the innocent students from those indulging in malpractices. One may feel sorry for the innocent students but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far this examination was concerned. It had no alternative but to cancel the results and we think, in the circumstances, they were justified in doing so. This should serve as a lesson to the students that such malpractices will not help them succeed in the examination and they may have to go through the drill once again. We also think that those incharge of the examinations should also take action against their supervisors/Invigilators etc., who either permit such activity or become silent spectators thereto. If they feel insecure because of the strong-arm tactics of those who indulge in malpractices^ the remedy is to secure the services of the Uniformed Personnel, if need be, and ensure that students do not indulge in such malpractices." ;

10A. If the present factual matrix is tested on the anvil of the aforesaid pronouncement of law, there remains no scintilla of doubt that there was masscopying and if I permit myself to say so there was an alarming situation.

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Next submission of Mr. Singh is that the petitioners should have been afforded an

opportunity of being heard is without nay substance inasmuch as the said issue is no more res Integra as controversy has put to rest, beyond doubt that principles of natural justice are to be followed in a case of mass copying.

At this juncture I may note that the video tape which was shown to me in Court exposed the manner in which an examination was conducted. It was seen that the Students were appearing in the examination sitting on the ground in the open area of the school. This Court was informed there was no adequate place for holding the examination and the examination was held in the morning hours before 11A.M. It is surprising to note that examination is conducted in such an atmosphere where the students have to sit on the ground without being provided any desk where they can rest their paper and possibility of any natural phenomena like scorching heat of the sun or as unsudden shower has not been taken note of . It was also noticed that number of people used to mingle amongst the students and provided copying materials. The Invigilators worked as if they were strolling the corridors of a th'eatre during interval enjoying the warmth of discussion over a scene enacted. The picture expositied a situation as if the state of education In the State has gone beyond repairs.

Mr. V. K. Tankha. learned Advocate General for the State and public officers who were present in Court by virtue of the order of this Court and expressed their surprise and assured that they will take steps so that examination is conducted in a proper manner. This Court hopes and trusts the authorities of the Board and the State administration would cooperate with each other and see that examination is properly conducted. Allegations have been made against the police that they kept silence. This does not speak good of the police administration. Hence, it is directed that the Collector and Superintendents of every district in the state have to keep themselves alive to such a situation and to take appropriate action to stop masscopying if their help is required by the competent authorities of the Board.

As per the allegations made by the Assistant Superintendent of the Examination Centre in regard to the report given by the Block Education Office, cannot be brushed aside. If the allegations made by the Assistant Superintendent are correct that has to be taken note of and curbed. The people who invigilates have to perform their duty and it cannot be countenanced thai the people who are to keep a vigil to avoid copying would aid in copying because they have been taken care of being bribed. If such a situation is tolerated the society would face a catastrophe and cataclysm would be such wherefrom there would be no path to retreat. Let the day not come when education would become a farce and in the name of education there will be commercial shops and certificates will be given on the basis of examination conducted in the above manner. Hence, appropriate steps are required to be taken. Accordingly, it is directed the Chairman of the Board and the Commissioner Public Instruction shall combindly hold an enquiry on the basis of the allegations made in the Annexure R/1 and the report submitted vide Annexure P/5, and recommend appropriate action to the State

Government. The State Government thereafter, shall take suitable action either by way of initiating disciplinary proceeding or criminal prosecution as circumstances so warrant. The action taken by the said authority shall be intimated to this Court by way of report within three months.

Now a word for the students. It has been noticed that in number of cases which have travelled to the Court, the students are constantly involved in masscopying. A student must realise that success cannot be achieved in a shortcut manner shortcut success is the first step of failure. A student who has the sacrosanct duties to study and appear in an examination like a brave soldier participating in a war, takes recourse to unfair means, not only smothers the basic concept of ethicality but also mars his own future, as the stigma gets attached to him. For a moment a student may feel that he is involved in a heroic act, but in my humble view, getting himself involved in an act of masscopying, is not at all a heroic act, but an act of cowardice in its most depraved sense. It is indubitably a deed of a recreant. A student must bear in mind that freedom to act in it inheres the following the system which is not only imposed by the collective but also self imposed. Freedom never means freedom from discipline. Freedom means self discipline. A student who is a future citizen of the nation has to get it embedded in his mind that indiscipline does not deserve a place in a democratic set up as it violates the collective interest. Quin-tessentially, who is involved in an act of mass copying takes a step towards conceptual erosion of the essence of democracy because he fights against the collective Interest which is necessary for building of a nation. A student who gets himself involved in mass copying guillotines his personality and also the canvass where the picture of the nation portrayed. It is expected that the students should rise beyond this and aspire to reach the stars (to face the examination in a moral and ethical manner) because they should remember, he who aspires for the stars, at least reaches the top of the tree.

14a. Exconsequenti, while declining to grant relief to the petitioners, the writ petition is disposed of with the directions contained in the above paragraphs. However, taking note of the anxiety of the petitioners, I am not disposed to award cost.