

(2005) 02 OHC CK 0010
In the Orissa High Court
Case No : O.J.C. No. 10081 of 1997

Kumari Madhusmita Jena and Another	APPELLANT
Vs	
Council of Higher Secondary Education and Others	RESPONDENT

Date of Decision : 18-02-2005

Acts Referred:

Citation : (2005) 1 OLR 619

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

Bench : Division Bench

Advocate : J.K. Rath, P.K. Das, B.N. Sarangi and J.P. Pati, for the Appellant; S.S. Das and K.C. Swain for O.Ps. 1 and 2, for the Respondent

Judgement

P.K. Mohanty, J.—The petitioners call in question the decision of the Council in cancelling English Paper-II, Political Science Paper-I and Economics Paper-I of Annual CHSE Examination held in the year 1997 and in awarding 00 marks in those papers.

2. The opposite party-Council has filed a counter affidavit. According to the Council, when English Paper-II was being conducted in Panchayat College of Science and Technology, Gengutia Centre during the second sitting of 19.3.1997, the Flying Squad visited the centre and detected that some employees were collecting incriminating materials from the examinees, which they noticed from the gate. One case of the individual malpractice was detected and reported. The report of the Flying Squad disclosed that the College had no space and the examinees were sitting in Veranda very close to each other and engaged in talking. A large number of incriminating materials were collected, by the Squad and the general condition inside the examination hall was quite disturbing. The Squad was of the view that the examination in English Paper-II was not conducted as per the examination rules. So far as the examination held in Political Science Paper-I on 21.3.1997 and Economics Paper-I held on 11.4.1997, it is stated that the examination was cancelled since the Flying Squad reported that those examinations were not conducted in accordance with the

rules and instructions of the Council. The Examination Committee of the Council, on consideration of the said materials, decided to cancel the same, the examination having not been conducted as per rules and the norms prescribed by the Council.

3. We had called for the report of the Flying Squad to satisfy ourselves as to whether the decision of the Council to cancel the examination in the aforesaid papers held in Panchayat College of Science and Technology, Gengutia, where the petitioners had appeared at the said examination is based on proper appreciation of material on record.

4. A perusal of the report of the Flying Squad dated 19.3.1997 indicates that when the Flying Squad was waiting outside the gate for the peon to open the lock, they noticed that some employees were collecting incriminating materials from the examinees. But only one such case of malpractice was reported. The College has no space and examinees are sitting in Veranda very close to each other. It has also been reported that a large number of incriminating materials were collected. The report does not specifically spell out as to whether or not a vast majority of examinees were adopting mal practice nor does it disclose the place from where the incriminating materials were collected by the members of the Squad. According to report, the Squad strongly felt that the examination was not conducted as per rules. A suspicion, however strong it may be cannot take the place of proof and justify cancellation unless the suspicion is based on observations made by its members and circumstances prevailing at the relevant point of time when the Flying Squad was present at the centre. The report, in our considered opinion, does not justify extreme step of cancellation of the examination on the ground of mass malpractice. The examining authorities like the Council while deciding the extreme action of cancelling the examination of whole lot of students should be conscious that they are cancelling the entire examination and there may be some brilliant and good students, who were not adopting malpractice. The examining authority is required to be fully satisfied that the examinees were indiscriminately resorting to mass malpractice and the examination in the centre was not conducted in accordance with the rules prescribed by the Council. In such view of the matter, we quash the decision of Council in cancelling the examination in English Paper-II of +2 (Arts) Regular held on 19.3.1997 of Panchayat College of Science and Technology, Gengutia Centre.

5. We have also perused the report of the Flying Squad in respect of examinations held on 21.3.1997 in Political Science Paper-I and the report with regard to the examination in Economics Paper-I on 11.4.1997. The report depicts a very sad picture as to how the examinations were being conducted. The Flying Squad found the Investigators to be abettors to the malpractice adopted by the examinees, inasmuch as, when the Squad started checking the examinees, the Centre Superintendent caught hold of the hands and cautioned the members of the Squad that in case malpractice would be detected and reported, the outsiders

would beat the members of the Flying Squad. According to the Squad, there was rampant malpractice and almost all students were resorting to such unfair means. The examination in those two papers was not conducted as per the norms prescribed by the Council.

6. In such view of the matter, we do not find any illegality or infirmity in the decision of the Examination Committee of the Council of Higher Secondary Education in cancelling the examination held on 21.3.1997 and 11.4.1997 in Political Science Paper-I and English Paper-II respectively in the aforesaid Centre and, as such, the decision of the Council needs no interference.

7. Before we part with the case, we deem it appropriate to observe that in spite of the report of the Flying Squad that the centre in question did not have the space to accommodate all the examinees allotted to the centre, for which they were sitting even in the Veranda close and talking freely to each other, the Council appears not to have taken any note of the same and take remedial measures in fixing of centre and assigning candidates, who can be accommodated in the centre in accordance with norms fixed. The Council is to fix up the centres and assign candidates which the centre can accommodate according to the norms prescribed. If the centre can accommodate only 100 examinees, but the Council assigns or allows much more examinees than the centre can accommodate, there may be possibility that the examinees may get an opportunity to look at the answers of the students sitting nearby. We hope, the Council while fixing up the centres and assigns such centres, to take note of the infrastructure and accommodation available in the centre to avoid such a situation.

8. In the result, we quash the decision of the Council so far as it relates to cancelling the examination in English Paper-II held during the second sitting of 19.3.1997 while upholding the decision of the Council in cancelling the examinations held on 21.3.1997 and 11.4.1997 in Political Science Paper-I and Economics Paper-I respectively in Panchayat College of Science and Technology, Gengutia centre.

A.K. Samantaray, J.

9. I agree.